

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF THE CITY OF PUEBLO, A MUNICIPAL)
CORPORATION, FOR AUTHORITY TO)
CONSTRUCT A NON-VEHICULAR)
RECREATIONAL TRAIL AT GRADE)
CROSSING TWO(2) TRACKS OF THE)
MISSOURI PACIFIC RAILROAD COMPANY)
IN PUEBLO, COLORADO, AT AND)
BETWEEN M.P. POST 894.64 AND 895.85)

DOCKET NO. 94A-364R
NOTICE OF APPLICATION FILED

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS OR CORPORATIONS:

You are notified that this application has been filed with the Colorado Public Utilities Commission, and any person desiring to intervene in or participate as a party in this proceeding shall file his petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party, within 30 days after the date of this notice.

At the time of this notice, the Commission has not deemed this application to be complete within the meaning of § 40-6-109.5, C.R.S.

The Commission may consider and decide this application upon the record without a formal public hearing if the application is deemed complete and no notice of intervention or petition to intervene contesting or opposing the application has been timely filed.

If a hearing is required in this matter, the Commission will notify the parties of the hearing date, time, and location. Applicants must appear at the hearing, if one is set, and present evidence in support of their application. Other parties may appear and present evidence in support of their position.

Unless previously filed, the applicant shall file its list of witnesses and copies of its exhibits not later than 10 days after the application is deemed complete. The applicant shall also serve each party and staff with its list of witnesses and copies of each of its exhibits.

Each intervenor shall file with the Commission a list of witnesses and copies of its exhibits at least 15 days before the first day of the hearing. Each intervenor shall also serve each party and staff with a list of its witnesses and copies of each of

JUL 15 1994

RECEIVED

its exhibits.

Upon objection by a party, no witness will be permitted to testify and no exhibit will be received in evidence, except in rebuttal, unless filed and served as provided in this notice.

If a party does not meet the requirements of this notice, the Commission may dismiss the application or intervention upon motion filed by any other party, or upon the Commission's own motion, unless good cause is shown.

No motion for continuance of any hearing set in this proceeding will be granted except as stated in Rule 69 of the Commission's Rules of Practice and Procedure.

Dated at Denver, Colorado, this 13th day of July, 1994.



FOR THE STAFF OF THE COMMISSION

Bruce N. Smith, Director
PUBLIC UTILITIES COMMISSION
Logan Tower, Office Level 2
1580 Logan Street
Denver, Colorado 80203
(303) 894-2000, Ext. 311



City of Pueblo

JAMES F. MUNCH
Director of Planning

DEPARTMENT OF PLANNING AND DEVELOPMENT

May 17, 1996

Mr. Ralph Mucci, Attorney
Florida Progress Corporation
1 Progress Plaza
St. Petersburg, FL 33701

**RE: GRANT OF EASEMENT AND RIGHT OF WAY
RUNYON TRAIL PUEBLO, COLORADO**

Dear Mr. Mucci:

Enclosed please find a copy of a revised bike trail easement which accurately describes the legal description of the proposed trail across Progress Rail Services property. The previous easement drawing did not reflect accurately location discussed with the City of Pueblo, Dick Dodge and Bruce Rodgers. A copy has been sent to Dick Dodge for his review.

Your attention on this matter is appreciated to expedite this Agreement to start construction as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. J. Zwick".

William J. Zwick
Senior Urban Design Planner

Enclosure: 1

cc: Mr. Dick Dodge, Progress Rail Services Corporation
Mr. Tom Florczak, Assistant City Attorney

BIKE TRAIL EASEMENT 1

A 30 foot easement being 15 feet on each side of the following described centerline located within the County of Pueblo, State of Colorado to-wit:

A easement being a portion of the SW 1/4 of Section 31, Township 20 South, Range 64 West of the Sixth Principal Meridian, being more particularly described as follows:

COMMENCING at a point being the most northerly corner of that parcel described in that document recorded in Book 2783 at Pages 213-215 in the records of the Pueblo County Clerk and Recorder from which the SW corner of said Section 31 bears S 57-47-45 W (bearings based on the south line of the SW 1/4 of said Section 31 monumented on the west by a concrete cylinder with lead and tack in cast iron box and on the east by a 30" x 2 1/2" aluminum monument, P.L.S. 16128 assumed to bear S 87-22-07 E) a distance of 918.16 feet; thence N 47-14-17 W along the northeasterly line of that parcel described in that document recorded in Book 2571 at Pages 722-725 in the records of the Pueblo County Clerk and Recorder a distance of 877.43 feet to a point on the easterly right of way line of Santa Fe Avenue; thence N 00-18-59 W along said easterly right of way line a distance of 74.04 feet to a point on the southerly line of the Pueblo Conservancy Districts, former Channel of the Arkansas River; thence S 64-04-32 E along said southerly line a distance of 153.48 feet to the POINT OF BEGINNING; thence along the centerline of said easement the following seven (7) courses:

- 1) S 53-58-25 E, a distance of 94.10 feet;
- 2) along the arc of a curve to the right having a central angle of 10-02-26 and a radius of 1000.00 feet a distance of 175.24 feet;
- 3) S 43-55-59 E, a distance of 96.86 feet;
- 4) along the arc of a curve to the left having a central angle of 43-29-20 and a radius of 25.00 feet a distance of 18.98 feet;
- 5) S 87-25-19 E, a distance of 61.76 feet;
- 6) along the arc of a curve to the left having a central angle of 10-27-37 and a radius of 100.00 feet a distance of 18.26 feet;
- 7) N 82-07-04 E, a distance of 96.69 feet to a point on said the southerly line of the Pueblo Conservancy Districts, former Channel of the Arkansas River being the POINT OF TERMINUS.

BIKE TRAIL EASEMENT 2

A 30 foot easement being 15 feet on each side of the following described centerline located within the County of Pueblo, State of Colorado to-wit:

A easement being a portion of the NW 1/4 of Section 6, Township 21 South, Range 64 West of the Sixth Principal Meridian, being more particularly described as follows:

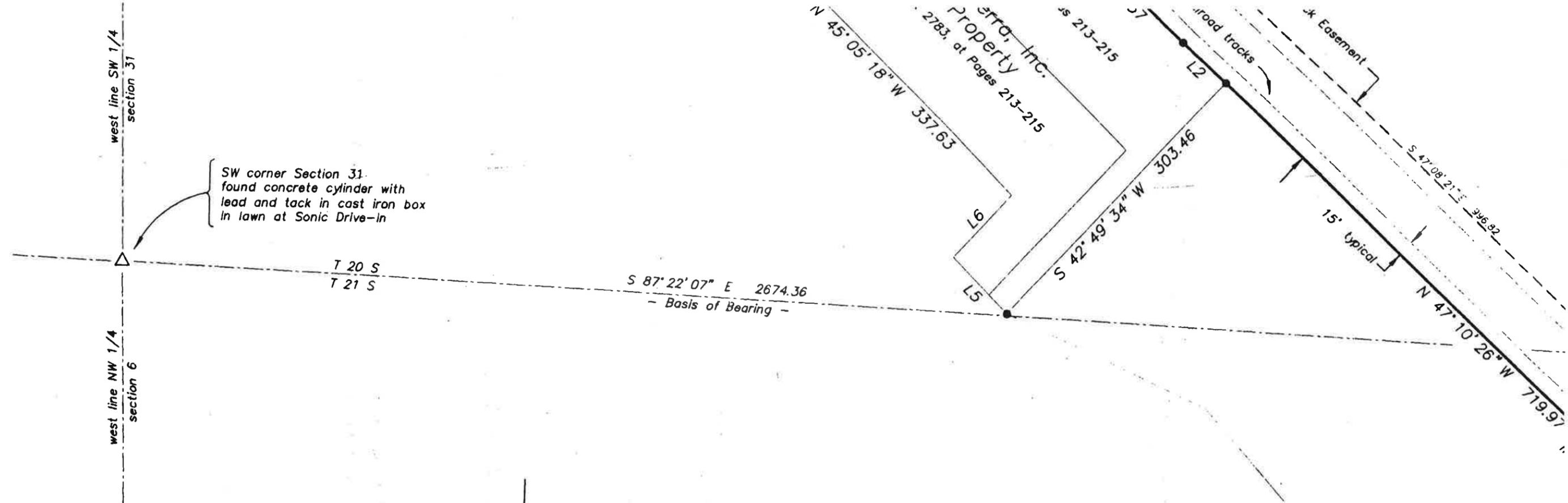
COMMENCING at a point being the most northerly corner of that parcel described in that document recorded in Book 2783 at Pages 213-215 in the records of the Pueblo County Clerk and Recorder from which the SW corner of said Section 31 bears S 57-47-45 W (bearings based on the south line of the SW 1/4 of said Section 31 monumented on the west by a concrete cylinder with lead and tack in cast iron box and on the east by a 30" x 2 1/2" aluminum monument, P.L.S. 16128 assumed to bear S 87-22-07 E) a distance of 918.16 feet; thence N 47-14-17 W along the northeasterly line of that parcel described in that document recorded in Book 2571 at Pages 722-725 in the records of the Pueblo County Clerk and Recorder a distance of 877.43 feet to a point on the easterly right of way line of Santa Fe Avenue; thence N 00-18-59 W along said easterly right of way line a distance of 74.04 feet to a point on the southerly line of the Pueblo Conservancy Districts, former Channel of the Arkansas River; thence along said southerly line the following four (4) courses:

- 1) S 64-04-32 E, a distance of 592.89 feet;
- 2) S 58-40-29 E, a distance of 707.54 feet;
- 3) S 35-40-55 E, a distance of 767.42 feet;
- 4) S 43-45-28 E, a distance of 599.67 feet to the POINT OF BEGINNING; thence along the centerline of said easement the following three (3) courses:
- 1) S 12-38-02 W, a distance of 4.21 feet;
- 2) along the arc of a curve to the left having a central angle of 65-04-17 and a radius of 5.00 feet a distance of 5.68 feet;
- 3) S 52-26-15 E, a distance of 37.63 feet to a point on the northerly line of that parcel described in that document recorded in Book 2659 at Pages 597 in the records of the Pueblo County Clerk and Recorder being the POINT OF TERMINUS.

Lot 2
Wheelstar Subdivision

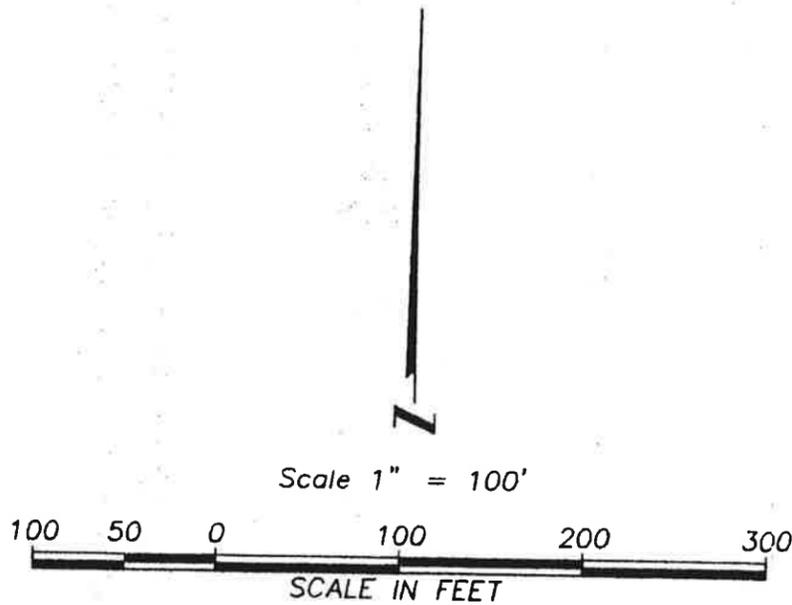
Former Channel Ark

N 55° E 767



LINE	BEARING	DISTANCE
1	N 80° 30' 54" W	58.49
2	N 47° 10' 26" W	57.51
3	N 39° 01' 35" W	95.22
4	S 64° 04' 32" E	8.81
5	N 45° 05' 18" W	74.63
6	N 42° 49' 34" E	80.89
7	S 53° 58' 25" E	94.10
8	S 43° 55' 59" E	96.86
9	S 87° 25' 19" E	61.76
10	N 82° 07' 04" E	96.69
11	S 12° 38' 02" W	4.21
12	S 52° 26' 15" E	37.63
13	S 43° 45' 28" E	34.58
14	S 43° 45' 28" E	31.99

CURVE	DELTA	RADIUS	ARC
1	5° 15' 53"	586.52	53.89
2	10° 02' 26"	1000.00	175.24
3	43° 29' 20"	25.00	18.98
4	10° 27' 37"	100.00	18.26
5	65° 04' 17"	5.00	5.68



- = Found No.4 rebar with yellow plastic cap, P.L.S. 16128
- = Set No.4 rebar with yellow plastic cap, P.L.S. 16128

City of Pueblo / Bill Zwick
Bikepath.Dwg
Wheistar.Crd
J.N. 96-139-00

Pueblo
Plat
Book 2659.

Channel Arkansas River

SW 1/4
Section 31

S 1/4 corner Section 31
found 30" x 2-1/2"
aluminum monument
P.L.S. 1612B

South Line SW 1/4 Section 31

east line SW 1/4
section 31

T 20 S
T 21 S

east line NW 1/4
section 6

NW 1/4
Section 6

typical

page 597

S 43° 45' 28" E 676.10
565.08

R=1010.29 A=537.42 D=30° 27' 47"

R=1052.34 A=560.32 D=30° 30' 25"

A=612.37 D=33° 20' 28"

Easement from
Pueblo Conservancy
District to Missouri
Pacific Railroad Book 739
at Page 544-546

POINT OF
BEGINNING

POINT OF
TERMINUS

N 12° 23' 53" E
Radial
centerline
bike trail 2

RECORDED
MAY 17 1996

Mangini & Associates, Inc.

Professional Engineers and Professional Land Surveyors
631 Lake Ave. - Pueblo, CO (719-544-0865)





INTEROFFICE CORRESPONDENCE

Environmental
Office

BT11F
MAC

824-6497
Telephone

SUBJECT: CITY OF PUEBLO, COLORADO TRAIL EASEMENT REQUEST

TO: Mr. Dick Dodge

DATE: May 20, 1996

Dick;

Bruce asked me to send you this blowup of what he feels to be the correct easement lines for the property in Pueblo, Colorado. This is what he feels was our agreement and the contract should proceed with these dimensions on this plot. Please contact me or Bruce if you have any questions.

Note

File 719.543.0572

*To Bill Zwick
From D. Dodge
Date: May 23, 1996*

Larry C. Camp
Larry C. Camp
Environmental Coordinator
Environmental Affairs

See attached. For your file

RESOLUTION NO. 7907

A RESOLUTION APPROVING AND ACCEPTING THE GRANT OF AN EASEMENT AND RIGHT OF WAY FROM PROGRESS RAIL SERVICES CORPORATION, AN ALABAMA CORPORATION, AND AUTHORIZING THE PRESIDENT OF COUNCIL TO EXECUTE AN ACCEPTANCE OF SAME

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PUEBLO, COLORADO, that:

SECTION 1:

The Grant of Easement and Right of Way dated June 20, 1996 from Progress Rail Services Corporation, an Alabama Corporation, to the City of Pueblo, a copy of which is attached hereto and on file at the office of the City Clerk, having been approved as to form by the City Attorney, is hereby approved and accepted.

SECTION 2:

The President of the City Council is hereby authorized to execute the Acceptance of said Easement and Right of Way by and on behalf of the City of Pueblo, a Municipal Corporation, and the City Clerk shall affix the Seal of the City thereto and attest same.

SECTION 3:

This resolution shall become effective upon final passage.

SECTION 4:

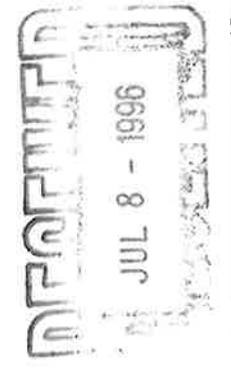
The \$1,250 Easement and Right of Way fee shall be paid from Account No. 145-1994-308-0-40-8823.

INTRODUCED: JUNE 24, 1996

BY: Cathy Garcia
COUNCIL PERSON

APPROVED:

PRESIDENT OF CITY COUNCIL



Reception #: 1129229 Date: 07/03/1996 Time: 306 Book: 2907 Page: 697 Chris C. Munoz
Inst: EASE R Fee: 15.00 D Fee: 0.00 SC: 1.00 Pg: 1 of 3 Pueblo Co.Clk.&Rec.

GRANT OF EASEMENT AND RIGHT OF WAY

THIS EASEMENT AND RIGHT OF WAY granted this 20th day of June, 1996 by Progress Rail Services Corporation, an Alabama corporation, hereinafter referred to as "Grantor", to the City of Pueblo, a Municipal Corporation, hereinafter referred to as "Grantee";

W I T N E S S E T H:

FOR AND IN CONSIDERATION of the sum of Twelve Hundred Fifty and No/100 Dollars (\$1,250.00) paid to Grantor by the Grantee, receipt of which is hereby acknowledged, and other good and valuable consideration, Grantor does hereby grant, sell and convey unto Grantee, its successors and assigns, an easement and right of way to construct, install, operate, maintain, repair and replace a non-vehicular recreational trail and associated signage and improvements for use by the public, through, under, over and across the following described lands of Grantor situated in the County of Pueblo, State of Colorado:

Trail Easement No. 1

A twenty foot wide easement and right of way located within the SW 1/4 of Section 31, Township 20 South, Range 64 West of the Sixth Principal Meridian, the centerline of which is described as follows: **COMMENCING** at a point being the most northerly corner of that parcel described in that document recorded in Book 2783 at Pages 213-215 in the records of the Pueblo County Clerk and Recorder from which the SW corner of said Section 31 bears S 57-47-45 W (bearings based on the south line of the SW 1/4 of said Section 31 monumented on the west by a concrete cylinder with lead and tack in cast iron box and on the east by a 30" x 2 1/2" aluminum monument, P.L.S. 16128 assumed to bear S 87-22-07 E) a distance of 918.16 feet; thence N 47-14-17 W along the northeasterly line of that parcel described in that document recorded in Book 2571 at Pages 722-725 in the records of the Pueblo County Clerk and Recorder a distance of 877.43 feet to a point on the easterly right of way line of Santa Fe Avenue; thence N 00-18-59 W along said easterly right of way line a distance of 74.04 feet to a point on the southerly line of the Pueblo Conservancy Districts, a former Channel of the Arkansas River, thence S 64-04-32 E along the southerly line a distance of 153.48 feet to the **POINT OF BEGINNING**; thence along the centerline of said easement the following seven (7) courses;

- 1) S 53-58-25 E. a distance of 94.10 feet.
- 2) along the arc of a curve to the right having a central angle of 10-02-26 and a radius of 1000.00 feet a distance of 175.24 feet.
- 3) S 43-55-59 E. a distance of 96.86 feet.
- 4) along the arc of a curve to the left having a central angle of 43-29-20 and a radius 25.00 feet a distance of 18.98 feet.
- 5) S 87-25-19 E. a distance of 61.76 feet.
- 6) along the arc of a curve to the left having a central angle of 10-27-37 and a radius of 100.00 feet a distance of 18.26 feet.
- 7) N 82-07-04 E. a distance of 96.69 feet to a point on the said southerly line of the Pueblo Conservancy Districts, former Channel of the Arkansas River being the POINT OF TERMINUS.

TO HAVE AND TO HOLD said easements and rights of way unto Grantee, its successors and assigns, until such trail be constructed, and so long thereafter as a trail is maintained thereon; subject and subordinate to easements, restrictions and reservations of record at the date hereof and subject to Grantor's use and occupancy of the above described property, provided such use and occupancy by Grantor does not unreasonably interfere with the rights herein granted.

And Grantee shall have the right to enter upon such lands of Grantor to such extent as Grantor and Grantee mutually agree is necessary to survey, construct, maintain, operate, repair, replace, control and use said trail and associated signage and improvements, and to remove objects interfering therewith, including the trimming of trees and bushes, and to use such of the adjoining premises of Grantor during surveying, construction, maintenance, repair, removal, or replacements of said trail and associated signage and improvements as Grantor and Grantee mutually agree is required to permit the operation of standard construction or repair vehicles and machinery, provided none of the foregoing activities unreasonably interferes with the operation of Grantor.

PROVIDED, HOWEVER, that after completion of construction of said trail, if the trail is abandoned or the use of same completely ceases for a period of 24 consecutive months, said easement and right of way shall thereupon terminate and be automatically extinguished and Grantee shall cause a termination of Grantee's rights herein granted to be recorded in the public records of Pueblo County.

And the use of said easement and right of way by Grantee is conditioned upon the following requirements being observed by Grantee:

- (a) Grantor will not be responsible for damage to property or injury or death to persons arising from or related to the use or maintenance of the easement and right of way by Grantee or by members of the public;
- (b) Grantee agrees to indemnify and hold harmless Grantor from all claims for damage to property, injury or death which arise from the construction, use or maintenance of the easement and right of way by Grantee or by members of the public, except where same have been caused or contributed to by the gross negligence or willful misconduct of Grantor.
- (c) Grantee shall construct, within the easement and right of way granted herein, a six foot high fence of chainlink or other durable materials to be located south of and parallel to that portion of the recreational trail constructed within the easement and right of way granted herein, the same being approximately 600 feet in length. Grantee shall also post the recreational trail at 3 locations along said fence, and at one additional location to the east of the easement and right of way granted herein, with signs which advise users of the trail that Grantor's adjacent property is private and that users must stay on the trail in that area.

EXECUTED this 20th day of June, 1996.

GRANTOR:
PROGRESS RAIL SERVICES CORPORATION,
an Alabama Corporation



ATTEST:

Ralph L. Sauer
Assistant Secretary

By: Michael V. Bombino
Name: Michael V. Bombino
Title: Vice President and Treasurer

COUNTY OF PINELLAS)
) ss.
STATE OF FLORIDA)

The foregoing instrument was acknowledged before me this 20th day of June
1996, by MICHAEL V. BOMBINO and RALPH S. MUCCI.

My commission expires: _____

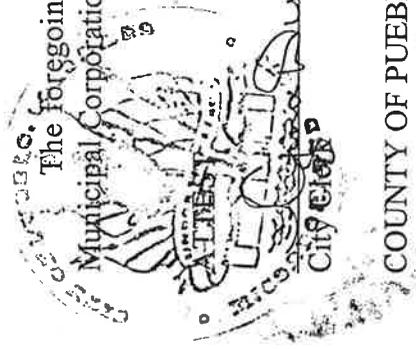


CAROLE L. PORTER
MY COMMISSION # CC406222 EXPIRES
December 30, 1998
BONDED THRU TROY FARM INSURANCE, INC.

Carole L. Porter
Notary Public

[SEAL]

ACCEPTANCE



The foregoing Grant of Easement and Right of Way is accepted by the City of Pueblo, a
Municipal Corporation, in accordance with its terms.

CITY OF PUEBLO, a Municipal Corporation

By Fay B. Kastelic
President of the City Council

COUNTY OF PUEBLO)
) ss.
STATE OF COLORADO)

The foregoing Acceptance was acknowledged before me this 27th day of June
1996 by Fay B. Kastelic, President of the City Council of Pueblo,
and by Gina Dutcher, its City Clerk.

My commission expires: 6/26/99.



Gina Dutcher
Notary Public



Southern Pacific Lines

Bob N. Prince
Manager Public Projects

1200 Corporate Center Drive • Monterey Park, Ca. 91754 • (213)980-6956

June 10, 1996

File: 909496/323.3

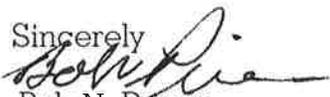
Mr. William J. Zwick
Senior Urban Design Planner
City of Pueblo
P.O. Box 1427
Pueblo, CO 81002

Dear Mr. Zwick:

Refer to previous correspondence regarding the Runyon Commuter Trail, Phase II.

Attached is the cities fully executed counterpart of the construction agreement.

When contract has been awarded please have your contractor contact this office to obtain Contractors Right of Entry Permit.

Sincerely

Bob N. Prince
Manager Public Projects

Contracts
Lonie Madison / Bob Prince
Public Projects
- 5173

THIS AGREEMENT, made this 13th day of May, 1996, by and between THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY and SOUTHERN PACIFIC TRANSPORTATION COMPANY herein termed " Railroad " and THE CITY of PUEBLO, a political subdivision of the State of Colorado, herein termed "City " ;

RECITALS:

The parties hereto desire to set forth by this instrument their agreements with respect to the construction of a bicycle trail underpass, hereinafter referred to as "structure", where same crosses beneath tracks of railroad at or near Pueblo, in the County of Pueblo, State of Colorado.

By separate instrument, Railroad will grant to City an easement for the construction, reconstruction, maintenance, and use of said structure.

AGREEMENT:

1. Except as herein otherwise provided, City shall furnish or cause to be furnished all labor, tools materials, and equipment for the construction of said structure. Said structure shall be constructed in a manner to accommodate Railroad's tracks and in accordance with plans and specifications which shall be subject to the approval of Railroad. A print of Railroad's Drawing No. A-15032, dated February 09, 1996, is attached and hereby made a part hereof.

2. Railroad shall furnish or cause to be furnished, as necessary due to the construction of said structure, including but not limited to engineering inspection and flagging as required. City shall reimburse Railroad for the cost and expense incurred by Railroad in connection with the construction of said structure.

3. All work contemplated hereunder shall be performed in a good and workmanlike manner to the satisfaction of the parties and each portion shall be properly commenced by the party hereto obligated to do same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

4. City will give reasonable notice to Railroad's Engineer before commencing any work in connection with said structure upon or adjacent to Railroad's property and shall observe Railroad's rules and regulations with respect thereto. All work upon said structure shall be done at such times and in such manner as not to interfere with or endanger the operations of Railroad.

5. Any Contractor performing work on the property of Railroad on behalf of the City in connection with work contemplated hereunder shall execute Railroad's standard form of Contractor's Right-of-Entry Agreement prior to commencing any work on Railroad's premises.

6. Upon completion of the construction of said structure, City, at its expense, shall maintain same, including pavement, drainage, lights, fences, and all bicycle trail underpass facilities and Railroad, at its expense, shall maintain its tracks, railroad drainage and all railroad facilities.

7. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Railroad and the assigns of City.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

THE DENVER & RIO GRANDE WESTERN
RAILROAD COMPANY

By Jamie L. Moeller
(Title) **MANAGER - CONTRACTS**

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By Jamie L. Moeller
(Title) **MANAGER - CONTRACTS**

Approved as to Form <i>[Signature]</i>
General Attorney

CITY of PUEBLO

By Jay B. Kastelic
(Title)

11
15491

RESOLUTION NO. 7862

A RESOLUTION APPROVING AN AGREEMENT BETWEEN PUEBLO, A MUNICIPAL CORPORATION, AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND SOUTHERN PACIFIC TRANSPORTATION COMPANY, TO CONSTRUCT A BICYCLE TRAIL UNDERPASS AS PART OF THE RUNYON TRAIL PROJECT AND AUTHORIZING THE PRESIDENT OF COUNCIL TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PUEBLO, COLORADO, that:

SECTION 1:

An agreement dated May 13, 1996, between the City of Pueblo, a Municipal Corporation, and the Denver and Rio Grande Railroad and Southern Pacific Transportation Company, of which a copy is attached hereto and on file at the office of the City Clerk, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2:

The President of the City Council is hereby authorized to execute and deliver said Agreement on behalf of the City of Pueblo, a Municipal Corporation, and the City Clerk shall affix the Seal of the City thereto and attest same.

SECTION 3:

This resolution shall become effective upon final passage.

INTRODUCED: MAY 13, 1996

BY: Al Girule
COUNCIL PERSON

APPROVED:
Jay B. Kastelic
PRESIDENT OF CITY COUNCIL

ATTEST:

Gina Dutcher
CITY CLERK

THIS AGREEMENT, made this 13th day of May, 1996, by and between THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY and SOUTHERN PACIFIC TRANSPORTATION COMPANY herein termed " Railroad " and THE CITY of PUEBLO, a political subdivision of the State of Colorado, herein termed "City " ;

RECITALS:

The parties hereto desire to set forth by this instrument their agreements with respect to the construction of a bicycle trail underpass, hereinafter referred to as "structure", where same crosses beneath tracks of railroad at or near Pueblo, in the County of Pueblo, State of Colorado.

By separate instrument, Railroad will grant to City an easement for the construction, reconstruction, maintenance, and use of said structure.

AGREEMENT:

1. Except as herein otherwise provided, City shall furnish or cause to be furnished all labor, tools materials, and equipment for the construction of said structure. Said structure shall be constructed in a manner to accomodate Railroad's tracks and in accordance with plans and specifications which shall be subject to the approval of Railroad. A print of Railroad's Drawing No. A-15032, dated February 09, 1996, is attached and hereby made a part hereof.

2. Railroad shall furnish or cause to be furnished, as necessary due to the construction of said structure, including but not limited to engineering inspection and flagging as required. City shall reimburse Railroad for the cost and expense incurred by Railroad in connection with the construction of said structure.

3. All work contemplated hereunder shall be performed in a good and workmanlike manner to the satisfaction of the parties and each portion shall be properly commenced by the party hereto obligated to do same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

4. City will give reasonable notice to Railroad's Engineer before commencing any work in connection with said structure upon or adjacent to Railroad's property and shall observe Railroad's rules and regulations with respect thereto. All work upon said structure shall be done at such times and in such manner as not to interfere with or endanger the operations of Railroad.

5. Any Contractor performing work on the property of Railroad on behalf of the City in connection with work contemplated hereunder shall execute Railroad's standard form of Contractor's Right-of-Entry Agreement prior to commencing any work on Railroad's premises.

6. Upon completion of the construction of said structure, City, at its expense, shall maintain same, including pavement, drainage, lights, fences, and all bicycle trail underpass facilities and Railroad, at its expense, shall maintain its tracks, railroad drainage and all railroad facilities.

7. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Railroad and the assigns of City.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

THE DENVER & RIO GRANDE WESTERN
RAILROAD COMPANY

By Jamie L. Moeller
(Title) **MANAGER - CONTRACTS**

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By Jamie L. Moeller
(Title) **MANAGER - CONTRACTS**

Approved as to Form
[Signature]
General Attorney

CITY of PUEBLO

By Jay B. Kastelic
(Title)

A-15032

LEGEND

-  Bike Path
-  SPTCo Property Lines

AVENUE U.P.

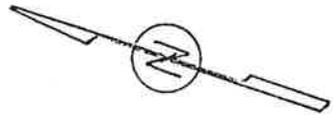
Bike Path

SANTA FE

ATSF TRK
D&RGW TRK

DENVER

GRAND JCT.



Southern Pacific
 Transportation Company
 OFFICE OF REGIONAL ENGINEER
 1200 CORPORATE CENTER DRIVE, MONTEREY PARK, CA 91754

PUEBLO JCT
 Bike Path for City
 of Pueblo

SCALE 1"=100'	WESTERN REGION
VAL. SEC. SHEET	DRAWN BY CHECKED BY
ROUTE NO. XC MP. 118.71	DRAWING NO. A-15032
DATE Feb 9, 1996	SHEET NO. 1
REVISED TO	FILE DRAWER

UNION PACIFIC RAILROAD COMPANY
CONTRACTS & REAL ESTATE DEPARTMENT

FILE COPY

R.D. UHRICH
ASSISTANT VICE PRESIDENT



SKG

JUL 30 1997

ROOM 1100, 1416 DODGE STREET
OMAHA, NEBRASKA 68179
(402) 271-3753
FAX (402) 271-5493

September 29, 1995

138-48

J. A. ANTHONY
DIRECTOR-CONTRACTS &
JOINT FACILITIES
D. D. BROWN
DIRECTOR-REAL ESTATE
J. L. HAWKINS
DIRECTOR-OPERATIONS SUPPORT
D. H. LIGHTWINE
DIRECTOR-REAL ESTATE
W. R. ULRICH
DIRECTOR-BUILDING SERVICES

157958

*SUE. JACK BAICER planned to take
a trip to PUEBLO to remove
some ABANDONED Xing. - WE
NEVER MADE THE TRIP E-470
WAS MORE IMPORTANT TO JACK/DICK*

BILL SWICK
CITY OF PUEBLO
DEPT OF PLAN & DEV
211 E D ST
PUEBLO CO 81003

Dear Bill:

RE: Agreement Dated 4/11/94 Between UPRR and City of Pueblo,
Covering Construction, Maintenance and Use of a Non-Vehicular
Recreation Trail (Runyon Commuter Trail) Between M.P. 894.64
and M.P. 895.85 in Pueblo, CO

It is my understanding the City has not constructed the above-
referenced trail. Also, the Railroad has sold their ownership in
a portion of this property to Progress Rail Services Corporation
(formerly Wheelstar).

The property that was sold to Progress Rail is shown on the
attached Exhibit "A" print dated August 3, 1995. A portion of your
trail is located within this property, which I have shown green on
the attached Exhibit "A" print dated September 28, 1993.

Your trail proposes to cross the Railroad's tracks within an
area the Railroad has an Easement interest in. This Easement area
is also shown on the Exhibit "A" print dated August 3, 1995, and
was not a part of the sale to Progress Rail.

Due to the type of business being conducted on this property,
as well as the huge volume of rail activity at this location, a
trail of any type would certainly pose safety concerns not only for
the Railroad, but for the new property owner, the City, as well as
the general public.

For the reasons stated above, the Railroad's position
regarding the construction of the crossing over our tracks is no
longer favorable.

In light of the above, enclosed are duplicate originals of a Termination Letter, mutually terminating the above-referenced Agreement.

Please arrange for the execution of this document, and upon receipt of the executed Termination Rider, I will arrange to refund the \$2,500 to the City.

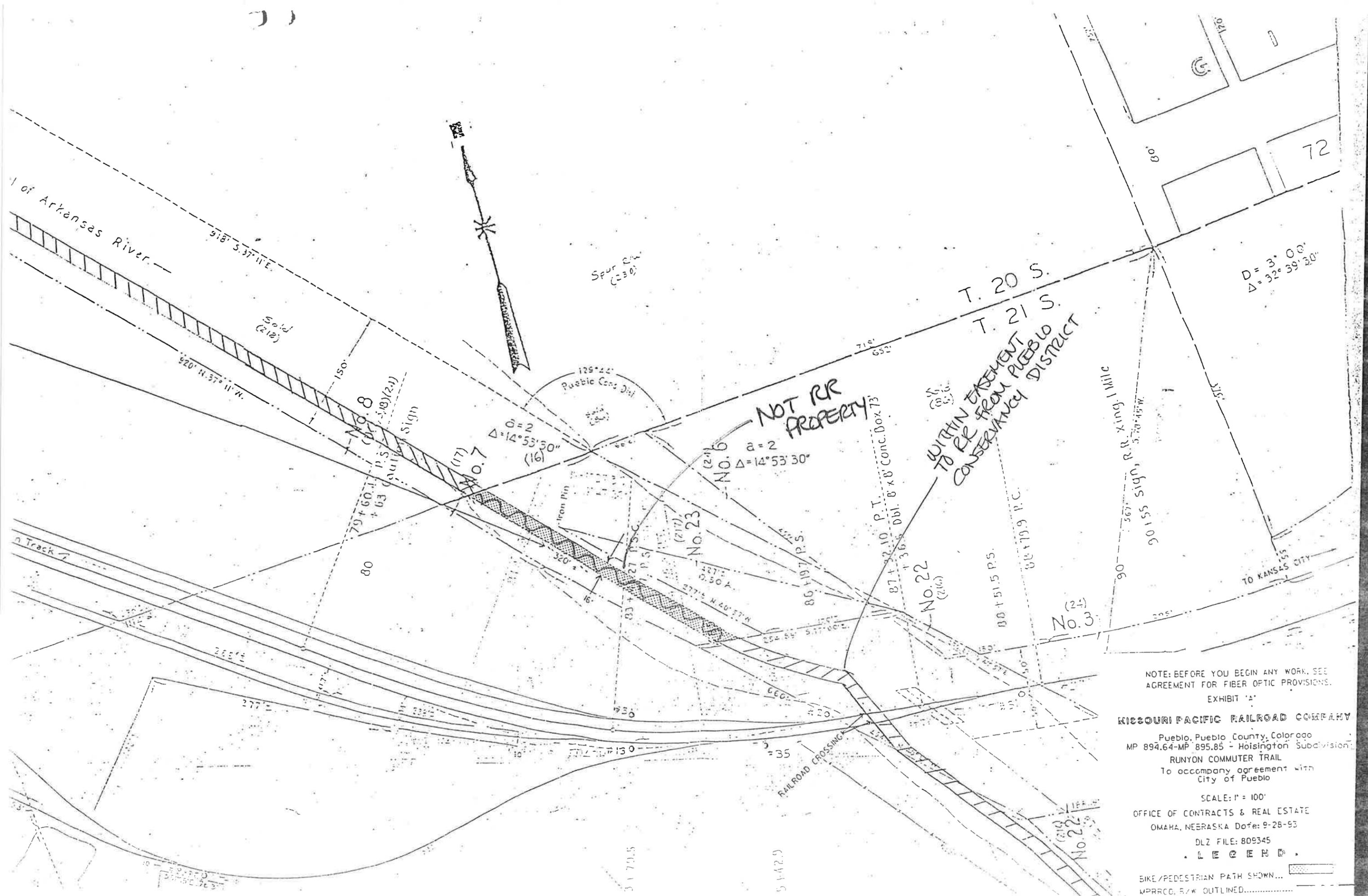
I understand you have been in contact with our engineering department concerning construction of an underpass at this location. A set of detailed plans for this underpass should be forwarded to Dick Rauschmeier, Manager-Industry and Public Projects, Union Pacific Railroad, 406 West 100 South, Salt Lake City, Utah 84101, telephone (801) 595-3560. Mr. Rauschmeier is now the Railroad's contact for projects in Colorado.

Please feel free to call me if you have any questions regarding this letter.

Sincerely,


Penny L. Rechtenbach
Manager - Real Estate
(402) 271-4880

cc: Milli Scheer - Room 1100
Dick Rauschmeier - Salt Lake City



D = 3° 00'
 Δ = 32° 39' 20"

NOT RR
 PROPERTY

WITHIN EASEMENT
 TO RR FROM PUEBLO
 CONSERVANCY DISTRICT

NOTE: BEFORE YOU BEGIN ANY WORK, SEE
 AGREEMENT FOR FIBER OPTIC PROVISIONS.
 EXHIBIT 'A'

MISSOURI PACIFIC RAILROAD COMPANY
 Pueblo, Pueblo County, Colorado
 MP 894.64-MP 895.85 - Hoisington Subdivision
 RUNYON COMMUTER TRAIL
 To accompany agreement with
 City of Pueblo

SCALE: 1" = 100'
 OFFICE OF CONTRACTS & REAL ESTATE
 OMAHA, NEBRASKA Date: 9-28-93
 DLZ FILE: 809345
 L E G E N D

BIKE/PEDESTRIAN PATH SHOWN...
 MPRCO, R/W OUTLINED.....

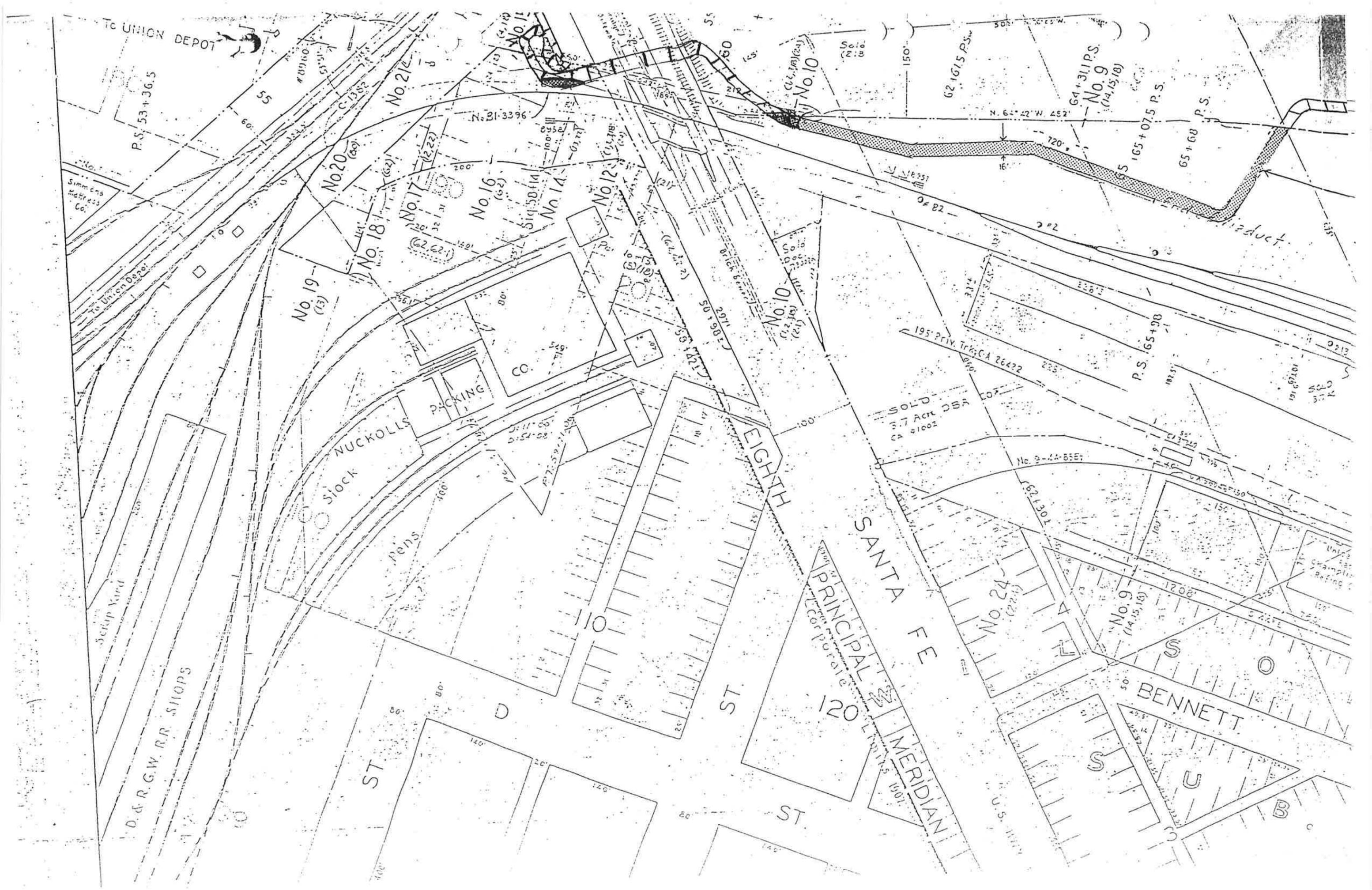


EXHIBIT "A"

A strip of land 15 feet wide, situated in the Northwest Quarter of Section 31, Township 20 South, Range 64 West, Sixth Principal Meridian, included within the bound of the Denver and Rio Grande Western Railroad, lying 7.5 feet on each side of the following described center line:

Commencing at the southeast corner of Parcel 2, described in that certain court case, recorded July 13, 1972 in Book 1722 & page 761, Records of the Pueblo County Courthouse; thence South $73^{\circ}07'$ West along the north right of way line of said railroad, a distance of 211.57 feet to the point of Beginning; thence South $6^{\circ}16'56''$ West along said center line of bike trail a distance of 10.37 feet; thence South $00^{\circ}25'$ West, along said center line, a distance of 101.65 feet; thence South $8^{\circ}22'58''$ West, along said center line, a distance of 0.38 feet to the south right of way line of said railroad.

11
15491

RESOLUTION NO. 7862

A RESOLUTION APPROVING AN AGREEMENT BETWEEN PUEBLO, A MUNICIPAL CORPORATION, AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND SOUTHERN PACIFIC TRANSPORTATION COMPANY, TO CONSTRUCT A BICYCLE TRAIL UNDERPASS AS PART OF THE RUNYON TRAIL PROJECT AND AUTHORIZING THE PRESIDENT OF COUNCIL TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PUEBLO, COLORADO, that:

SECTION 1:

An agreement dated May 13, 1996, between the City of Pueblo, a Municipal Corporation, and the Denver and Rio Grande Railroad and Southern Pacific Transportation Company, of which a copy is attached hereto and on file at the office of the City Clerk, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2:

The President of the City Council is hereby authorized to execute and deliver said Agreement on behalf of the City of Pueblo, a Municipal Corporation, and the City Clerk shall affix the Seal of the City thereto and attest same.

SECTION 3:

This resolution shall become effective upon final passage.

INTRODUCED: MAY 13, 1996

BY: Al Girule
COUNCIL PERSON

APPROVED:
Jay B. Kastelic
PRESIDENT OF CITY COUNCIL

ATTEST:

Gina Dutcher
CITY CLERK

THIS AGREEMENT, made this 13th day of May, 1996, by and between THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY and SOUTHERN PACIFIC TRANSPORTATION COMPANY herein termed " Railroad " and THE CITY of PUEBLO, a political subdivision of the State of Colorado, herein termed "City " ;

RECITALS:

The parties hereto desire to set forth by this instrument their agreements with respect to the construction of a bicycle trail underpass, hereinafter referred to as "structure", where same crosses beneath tracks of railroad at or near Pueblo, in the County of Pueblo, State of Colorado.

By separate instrument, Railroad will grant to City an easement for the construction, reconstruction, maintenance, and use of said structure.

AGREEMENT:

1. Except as herein otherwise provided, City shall furnish or cause to be furnished all labor, tools materials, and equipment for the construction of said structure. Said structure shall be constructed in a manner to accomodate Railroad's tracks and in accordance with plans and specifications which shall be subject to the approval of Railroad. A print of Railroad's Drawing No. A-15032, dated February 09, 1996, is attached and hereby made a part hereof.

2. Railroad shall furnish or cause to be furnished, as necessary due to the construction of said structure, including but not limited to engineering inspection and flagging, as required. City shall reimburse Railroad for the cost and expense incurred by Railroad in connection with the construction of said structure.

3. All work contemplated hereunder shall be performed in a good and workmanlike manner to the satisfaction of the parties and each portion shall be properly commenced by the party hereto obligated to do same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

4. City will give reasonable notice to Railroad's Engineer before commencing any work in connection with said structure upon or adjacent to Railroad's property and shall observe Railroad's rules and regulations with respect thereto. All work upon said structure shall be done at such times and in such manner as not to interfere with or endanger the operations of Railroad.

5. Any Contractor performing work on the property of Railroad on behalf of the City in connection with work contemplated hereunder shall execute Railroad's standard form of Contractor's Right-of-Entry Agreement prior to commencing any work on Railroad's premises.

6. Upon completion of the construction of said structure, City, at its expense, shall maintain same, including pavement, drainage, lights, fences, and all bicycle trail underpass facilities and Railroad, at its expense, shall maintain its tracks, railroad drainage and all railroad facilities.

7. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Railroad and the assigns of City.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

THE DENVER & RIO GRANDE WESTERN
RAILROAD COMPANY

By Jamie L. Moeller
(Title) **MANAGER - CONTRACTS**

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By Jamie L. Moeller
(Title) **MANAGER - CONTRACTS**

Approved as to Form <u>[Signature]</u>
General Attorney

CITY of PUEBLO

By Jay B. Kastelic
(Title)

A-15032

DATE	11/18/71
BY	W.C.
CHECKED BY	W.C.
SCALE	1"=100'
PROJECT	BIKE PATH FOR CITY OF PUEBLO
SHEET NO.	1
DRAWING NO.	A-15032
ROUTE NO.	WC
MP.	118.71
DATE	FEB 9, 1996
REVISIONS	
NO.	
DATE	
BY	
DESCRIPTION	

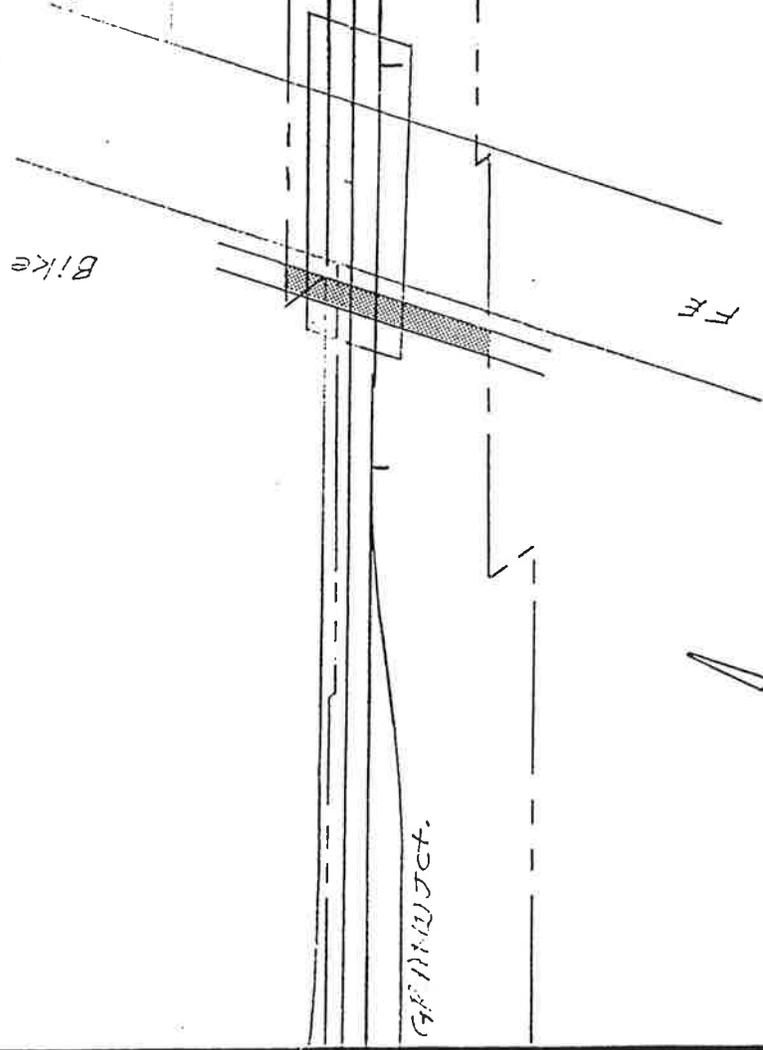
AVENUE U.P.

Bike Path

SOUTH FE

LEGEND

-  Bike Path
-  SPTCo Property Lines



ATSF TRK
DARGWITZ

DENVER

GRAND JCT.

Southern Pacific
 Transportation Company
 OFFICE OF REGIONAL ENGINEER
 1200 CORPORATE CENTER DRIVE, MONTEREY PARK, CA 91754

PUEBLO JCT
 Bike Path for City
 of Pueblo

SCALE	1"=100'	WESTERN REGION
VAL. SEC.	SHEET	DRAWN BY
ROUTE NO.	WC	MP. 118.71
DATE	FEB 9, 1996	DRAWING NO. A-15032
REVISIONS		SHEET NO. 1
NO.		FILE DRAWER

GMO _____ NO ___ YR ___

DETAIL OF ESTIMATE

RT: WC MF: 118.19
 STATION: PUEBLO JCT, CO
 DIVN: DENVER
 VAL SEC: CO-3

CONSTRUCT BICYCLE PATH UNDERCROSSING @
 M.P. WC-118.71

PROJECT: PUEBLO
 BY: TNA 04/03/96
 F 30 #
 FILE # 909 496/323.2
 DRAWING:
 DATE:

EIN	DESCRIPTION	UN	QTY	LABOR COST	MATERIAL COST	OTHER COST	NON-CASH COST	TOTAL EIN	TOTAL CASH
--- WORK TO BE PERFORMED ---									
644	B & B WATCHMAN	DY	10.000	1,280				1,280	1,280
	ENGINEER INSPECTOR	DY	2.000	312				312	312
	MEALS & LODGING	LT	1.000			134		134	134
	VEHICLE & MILEAGE	LT	1.000			90		90	90
	ADDITIVE (CITY)		1.000			1,952		1,952	1,952
	CONTINGENCIES		1.000			377	0	377	377
*TOTAL EIN 644				1,592	0	2,553	0	4,145	4,145
*DEBIT RECOLLECTIBLE				1,592	0	2,553	0	4,145	4,145

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF THE CITY OF PUEBLO, A MUNICIPAL)
CORPORATION, FOR AUTHORITY TO)
CONSTRUCT A NON-VEHICULAR)
RECREATIONAL TRAIL AT GRADE)
CROSSING TWO(2) TRACKS OF THE)
MISSOURI PACIFIC RAILROAD COMPANY)
IN PUEBLO, COLORADO, AT AND)
BETWEEN M.P. POST 894.64 AND 895.85)

DOCKET NO. 94A-364R

ENTRY OF APPEARANCE
AND
NOTICE OF INTERVENTION

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS OR
CORPORATIONS:

You are notified that the Staff of the Commission hereby enters its appearance and intervention in the above captioned application. By this intervention, the Staff of the Commission does not oppose or contest the granting of this application, but rather indicates to the parties and all interested persons, firms or corporations that Staff will participate in any hearing which results from an intervention contesting or objecting to any portion of this application. If no other interventions are filed or if no other petitions seeking interventions are granted, other than interventions in support, so that this application is noncontested or unopposed, the Staff will then participate to the extent necessary to insure that the Commission file in this proceeding is complete and accurate. Service upon Staff as required by Rule 9(b)(2), of the Commission's Rules of Practice and Procedure, may be made by serving documents on John H. Baier of the Commission Staff.

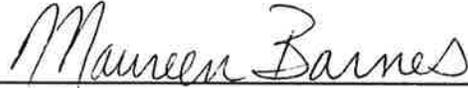
Dated at Denver, Colorado, this 13th day of July, 1994.

FOR THE STAFF OF THE COMMISSION

Bruce N. Smith by Michael K. H. Smith
Bruce N. Smith, Director
Public Utilities Commission
Logan Tower, Office Level 2
1580 Logan Street
Denver, Colorado 80203
(303) 894-2000, Ext. 311

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing ENTRY OF APPEARANCE AND NOTICE OF INTERVENTION OF THE STAFF OF THE COMMISSION in the U.S. mail, postage prepaid, this 13th day of July, 1994, addressed as follows:



Maureen Barnes
Administrative Assistant

Merrill Shields, Esq.
Deputy Attorney General
Regulatory Law Section
1525 Sherman, 5th Floor
Denver, Colorado 80203

K.C. Packard, Superintendent
of Transportation Services
Union Pacific Railroad Company
2801 RockCreek Parkway
Kansas City, MO 64117

Timothy J. Harris
Agreements Engineer
Colorado Department of
Transportation
4201 East Arkansas
Denver, Colorado 80222

Pueblo Conservancy District
Attn: Mr. Ray Koester
111 E. 5th Street
P.O. Box 234
Pueblo, CO 81002

Fay Kastelic, Mayor
City of Pueblo
P.O. Box 1427
Pueblo, CO 81002

Kathy Farley
Commission Chair
Pueblo County
215 W. 10th Street
Pueblo, CO 81003

Thomas E. Jagger
& Thomas J. Florczak
Attorneys for City of Pueblo
127 Thatcher Building
Pueblo, CO 81003

Terry Hart
Attorney, Pueblo County
215 W. 10th Street
Pueblo, CO 81003

William J. Zwick
Senior Urban Design Planner
Dept. of Planning and
Development
211 East "D" Street
Pueblo, CO 81003

Kenneth Conyers
Engineer, Region II
Colorado Department
Of Transportation
905 Erie Avenue
Pueblo, CO 81002

Mark Hansen, Esq.
Gorsuch, Kirgis, Campbell,
Walker and Grover
1401 17th Street, Suite 1100
Denver, CO 80217

Barry Ryan
Asst. Attorney General
Dept. of Natural Resources
1525 Sherman, Room 500
Denver, CO 80203

Cliff Shoemaker, Director of
Industrial and Public Projects
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Richard Compton
Westplains Energy
200 W. First Street
Pueblo, CO 81003

Elizabeth Fronck
U.S. West Communications
315 Eagleridge Boulevard
Pueblo, CO 81008

Mike Harris
Public Service Company
of Colorado
Pueblo Gas & Fuel Division
830 N. Main Street
Pueblo, CO 81003

REC
OCT 11 2005

P.U.C. Runyon Trail Crossing
FED. ID. # ~~3~~

Bill - let ~~me~~ me know what
account you want this charged to.

Thanks!

1096514

CITY OF PUEBLO

CO

Attn: PICK UP

\$66.00

Auss White-Alpenty

Reception #: 1096514 Date: 10/13/1995 Time: 1104 Book: 2837 Page: 362 Chris C. Munoz
Inst: AGREE R Fee: 65.00 D Fee: 0.00 SC: 1.00 Pg: 1 of 16 Pueblo Co.Clk.&Rec.

AGREEMENT allowing the CITY OF PUEBLO permission to be on and about Railroad property for the purpose of construction, maintenance and use of a nonvehicular recreation trail between Mile Post 894.64 and Mile Post 895.85 on the Hoisington Subdivision in Pueblo, Colorado.

THIS AGREEMENT is made as of the 11th day of April, 1994, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter the "Railroad") and the CITY OF PUEBLO, a municipal corporation of the State of Colorado (hereinafter called "Licensee").

IT IS AGREED as follows:

171670

Section 1. Right Granted.

A. The Railroad hereby grants Licensee the right, during the term, hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have reasonable ingress to and egress from the Railroad's right-of-way between the Railroad's Mile Post 894.64 and Mile Post 895.85 on the Hoisington Subdivision at Pueblo, Colorado, as shown on the attached print dated September 25, 1993, marked Exhibit A, for the sole and exclusive purpose of constructing, maintaining and using a 20-foot-wide concrete nonvehicular recreational trail across Railroad's property and constructing a 10-foot-wide asphalt crossing surface across the Railroad's tracks for use by pedestrians and maintenance vehicles. Railroad is agreeable to allowing this operation to be undertaken, providing the following conditions are met:

B. This agreement and the license and permission herein granted shall be effective as of the date first hereinabove written, and shall remain in full force and effect unless terminated as herein provided.

C. The right hereby granted is subject and subordinate to the Railroad's use of the railroad's property for railroad and incidental purposes, and is subject to any and all encumbrances and rights (whether public or private), irrespective of whether or not they are recorded, existing at the time of granting said right, and also to any and all extensions and renewals of said existing encumbrances and rights. Licensee shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's said property, unless Licensee, at Licensee's own expense, settles with and obtains release from such nonparties on mutually satisfactory terms.

D. The parties agree and understand that Railroad operations may include blocking the subject crossing for periods of time as necessary in the normal course of operation. The Railroad will make reasonable efforts to keep the crossing clear when switching is not being performed but it shall not be subject to any liability, penalty or breach of this agreement by blocking the crossing.

E. Said right is granted only insofar as the Railroad lawfully may grant the same, and the Railroad makes no covenant or warranty of title, for quiet possession or against encumbrances. Said right includes only the Railroad's property identified in Paragraph A of this section, and no other property; and Licensee, by virtue of this grant, shall not encroach upon, occupy or use any other property of the Railroad. Licensee's use of said property shall be subject to the safety and performance of work provisions set forth in Section 2 of this agreement.

F. The Railroad grants to Licensee only the right for the purpose aforesaid, and no interest in land or estate. Licensee shall not use or permit use of said property or any part thereof for any other purpose. No nonparty shall be admitted by Licensee to use or occupy any part of the Railroad's property for any purpose except as specifically provided for herein without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent, which, if granted, may be subject to such terms and conditions as the Railroad, in the Railroad's sole discretion, may deem to be necessary or convenient. If said property of the Railroad, or any part thereof, shall cease to be used for the purposes aforesaid or shall be used for purposes unauthorized herein, then the right hereby granted as to such property or parts thereof shall cease and terminate.

G. As compensation for the rights granted herein, Licensee shall pay the Railroad, in advance, the sum of Two Thousand Five Hundred Dollars (\$2,500.00).

Section 2. Safety and Performance of Work.

A. The Licensee shall furnish all labor, material, equipment and supervision for, and shall install a ten-foot-wide asphalt surface in the vicinity of Mile Post 894.64 in Pueblo, Colorado, as shown generally on Railroad's Exhibit A print dated September 25, 1993.

B. All work by or on behalf of Licensee on the Railroad's property shall be performed by Licensee at Licensee's own expense and without expense to the Railroad. All references herein to work of Licensee shall include such work, whether performed by Licensee or Licensee's agents, employees or contractors.

C. Before commencing any such work, Licensee shall give the Railroad reasonable notice thereof, which notice shall be given not less than one (1) week, exclusive of weekends and holidays, prior to the time work is to commence. Railroad's representatives to be contacted prior to entering upon Railroad's right-of-way is Superintendent of Transportation Services in Kansas City, Missouri, telephone (816) 245-2796, and Manager-Track Maintenance in Scott City, Kansas, telephone (316) 872-2002. All of said work shall be performed at reasonable times and in such manner as not to endanger, interfere with, interrupt or delay the Railroad's operations, nor damage the Railroad's property, nor cause injuries to or death of persons or damage to or loss or destruction of property of the Railroad.

D. Licensee shall exercise due care to prevent injuries to or death of persons and damage to or destruction of property for the safety of whom or of which the Railroad may be responsible, and damage to or destruction of property of the Railroad. Licensee shall and does assume all risk of damage to Licensee's own property and injury to Licensee's own personnel, resulting from or incidental to the prosecution of said work or from the presence of Licensee's property and personnel upon or about the Railroad's property, except to the extent such loss is caused by the negligence of the Railroad, its officers, agents or employees.

E. In performing said work on or in the vicinity of the Railroad's property, Licensee shall exercise special care not to cause or create instability of rock, earth or other material, or cause slides of falling rock, earth or debris, nor to damage, obstruct or interfere with drainage, whether natural or artificial.

F. The Railroad, at the expense of Licensee, which expense Licensee agrees to pay promptly upon receipt of bill or bills therefor, shall furnish and station such flagman or flagmen as in the Railroad's judgment may be necessary or expedient to protect the Railroad's property and operations at the site of all such work by Licensee near any track of the Railroad. Licensee shall not perform any work in the vicinity of any track or tracks where the Railroad has determined a flagman or flagmen should be stationed, unless such flagman or flagmen are present.

G. Upon the completion of such work, Licensee shall restore and leave the Railroad's property in a condition satisfactory to the Railroad, including filling and leveling of all holes and pits, if any.

H. Licensee, at its own sole cost and expense, shall determine the appropriate need for and design of warning signs at the crossing and shall design, construct and install and maintain those signs throughout the existence of this crossing. Licensee accepts full responsibility for the design, construction, installation and maintenance of such signs or signals and will hold the Railroad harmless and indemnify the Railroad from any claims of their inadequacy whatsoever.

Section 3. Claims and Liens for Labor and Material.

Licensee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Railroad's property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee.

Section 4. Compliance with Legal Requirements.

Licensee, in performing the work, shall observe and comply with all applicable federal, state and municipal and other laws, ordinances, rules and regulations, and shall apply for and obtain any and all public authority, permission and licenses necessary therefor, including any permission or authority from the Colorado Public Utilities Commission. Licensee shall indemnify and hold harmless the Railroad from and against any loss, cost, damage and expense, liabilities, penalties, claims and forfeitures resulting from any failure of Licensee to comply with the provisions of this section, or to comply with the requirements of any public authority, license or permission obtained as aforesaid.

Section 5. Assumption of Risk; Indemnification.

Licensee's use and occupancy of the Railroad's right-of-way is at Licensee's own risk, and Licensee agrees to and does assume all risks thereof and incidental thereto, including, without limitation, risks incident to the Railroad's train operations within the right-of-way. Licensee acknowledges that Licensee's use of the Railroad's right-of-way permitted hereunder will subject the Railroad's property and operations to additional hazards and liability; and, as material consideration for this license, Licensee shall indemnify and hold harmless the Railroad and other railroad companies which use the property of the Railroad, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which may result from injury to or death of persons whomsoever or from loss of or damage to property whatsoever (including damage to the roadbed, track, equipment, or other property of the Railroad and such other railroad companies) when such injury, death, loss or damage is due to or arises in connection with or as a result of the use of the Railroad's right-of-way by Licensee or the agents or employees of Licensee, or by others with the consent of Licensee, or by the general public, or by the equipment on the right-of-way with the consent of Licensee, or the breach of any covenant or obligation assumed by or imposed

on Licensee pursuant to this agreement, or for failure of Licensee to promptly and fully do any act or work for which Licensee is responsible pursuant to this agreement, except to the extent such loss is caused by the negligence of the Railroad, its officers, agents or employees.

Section 6. Termination on Breach and Waiver of Breach.

It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by Licensee shall, at the option of the Railroad, forthwith work a termination of this agreement and all rights of Licensee hereunder. A waiver by the Railroad of a breach by Licensee of any covenant or condition of this agreement shall not impair the right of the Railroad to avail the Railroad of any subsequent breach thereof.

Section 7. Default.

If Licensee shall fail, refuse or neglect to do, keep, observe and perform each and all of the terms, provisions, conditions and covenants of this agreement, the Railroad, in addition to any other rights and remedies the Railroad may have, may perform any work which in the judgment of the Railroad is necessary to place the Railroad's property in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and Licensee will reimburse the Railroad for the expense thereof.

Section 8. Insurance.

A. Licensee shall procure, or require any contractor engaged or employed to perform any work hereunder on behalf of Licensee on any part of premises to procure, and keep in effect during the period of such work Worker's Compensation Insurance in statutory limits, and Contractor's Public Liability Insurance providing for a limit of not less than \$1,000,000.00 for all damages arising out of bodily injuries to or death of one person and, subject to that limit for each person, a total limit of \$1,000,000.00 for all damages arising out of bodily injury or death of two or more persons in any one occurrence, and Property Damage Liability Insurance providing for a limit of not less than \$1,000,000.00 for all damages arising out of injury to or destruction of property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$1,000,000.00 for all damages arising out of injury to or destruction of property during the annual policy period. If any part of the work is sublet, similar insurance shall be provided by or in behalf of the subcontractors to cover their operations. Any limitation in the foregoing insurance which excludes work performed within fifty (50) feet of a railroad track shall be exempted out of said policies.

B. Regardless of the insurance provisions set forth in Section 8 hereof, Licensee shall further require any contractor engaged or employed to perform any of the work referred to herein on any part of Railroad's property covered by this agreement to procure and keep in effect during the period of such work Railroad Protective Liability Insurance, in the form set forth in Federal Highway Program Manual, Volume 6, Section 2, Subsection 2, dated October 25, 1974, issued by Federal Highway Administration, as amended, on behalf of railroad, in amount of \$2,000,000.00 combined single limit per occurrence for bodily injury, death and property damage, with an aggregate limit of \$6,000,000.00 for the annual term of the policy; such insurance shall be in the form and in a company satisfactory to Railroad; and Licensee or its contractor shall not attempt to perform any work on or about Premises until notified by Railroad that the Railroad Protective Liability policy required hereunder is in form satisfactory to Railroad.

C. Licensee shall further, at its own sole cost and expense procure and maintain in effect General Public Liability Insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least \$1,000,000.00 each occurrence or claim and aggregate limit of at least \$1,000,000.00. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a two (2) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this agreement be cancelled.

D. The contractor shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsements and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify the Railroad in writing of any material alteration, including any change in the retroactive date in any "claims made" policies, or substantial reduction of aggregate limits if such limits apply, or cancellation thereof at least thirty (30) days prior thereto. The insurance policies shall be written by a reputable insurance company acceptable to the Railroad and authorized to transact business in Colorado.

E. Anything in this Agreement to the contrary notwithstanding, the Railroad has been advised that the Licensee is self-insured for general public liability insurance for which the Licensee shall be responsible under this Agreement and arising out of Licensee's obligations to Railroad under this Agreement. Railroad agrees that so long as Licensee maintains its self-insured status, no additional or supplemental insurance coverage shall be required under this Agreement.

Section 9. Fiber Optic Cable Warning.

A. Fiber optic cable systems may be buried on the Railroad's property. Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

B. In addition to other indemnity provisions in this agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractors, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 10. Successors and Assigns.

This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, but Licensee shall not assign this agreement or any right hereunder without the written consent of the Railroad.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in duplicate as of the day and year first herein written.

MISSOURI PACIFIC RAILROAD COMPANY

By [Signature]
Title: Assistant Vice President-
Contracts and Real Estate

CITY OF PUEBLO

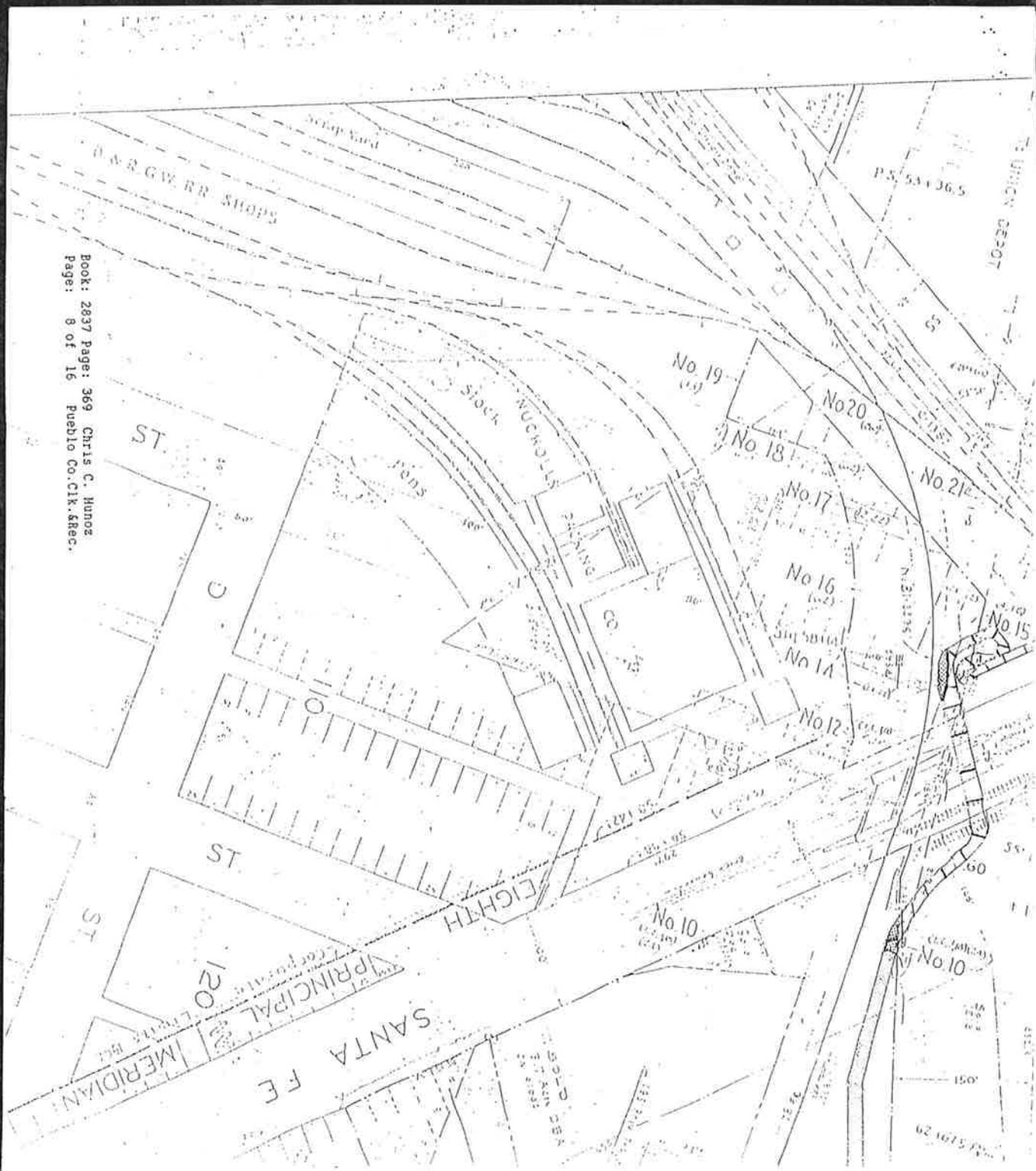
By [Signature]
Title:

Pursuant to attached ~~Ordinance~~
Resolution dated April 11, 1994

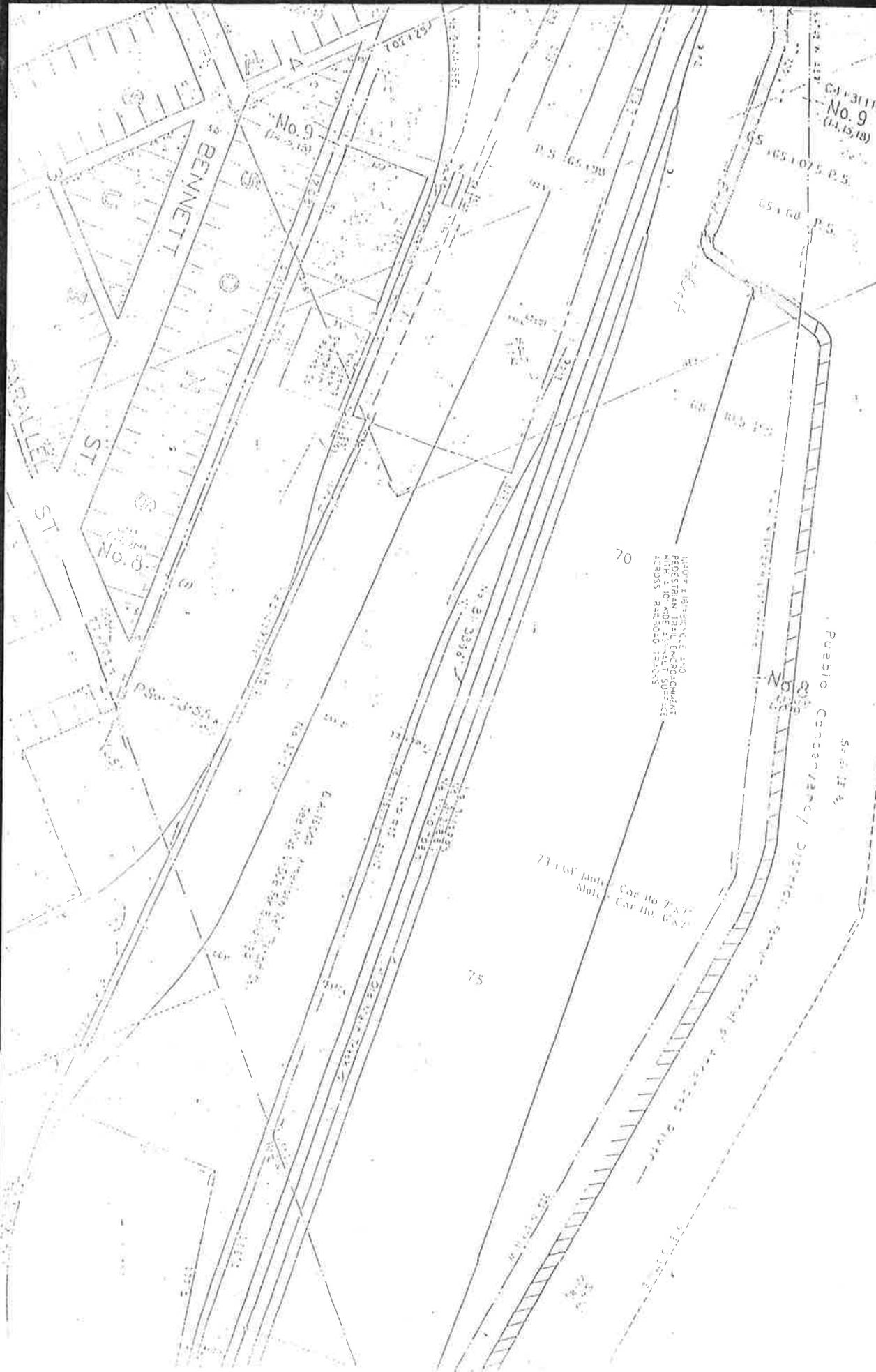


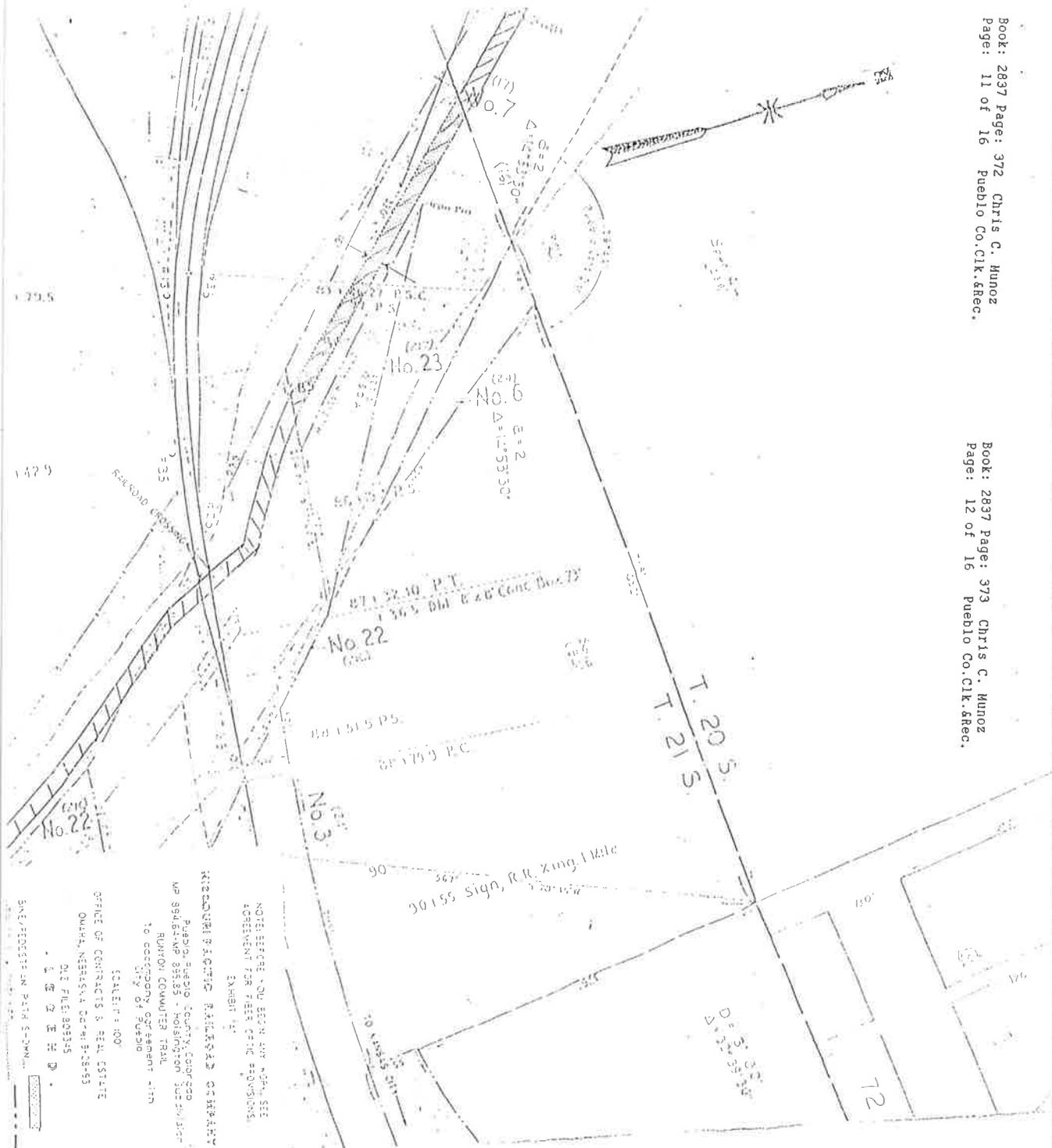
Attest:

[Signature]
Title:



Book: 2837 Page: 369 Chris C. Hunoz
 Page: 8 of 16 Pueblo Co. Clk. Rec.





NOTE: BEFORE YOU SIGN ANY INSTRUMENT, SEE FOREWARRANT FOR THEIR OFFICE REQUIREMENTS. EXHIBIT #1

RECORDED BY: J. R. HARRIS, COUNTY CLERK
SABINO, SABINO COUNTY, COLORADO
MAP 951, 651-23 - HOLDING STATE LICENSE
RUMYON, COLORADO, TRAIL
TO CORNER OF SECTION 11th
CITY OF SABINO

SCALE: 1" = 100'

OFFICE OF CONTRACTS & REAL ESTATE
ONE W. NEBRASKA, DENVER, CO 80202
PHONE: 303.733.3000
FAX: 303.733.3000

STATE REGISTERED PROFESSIONAL SURVEYOR

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

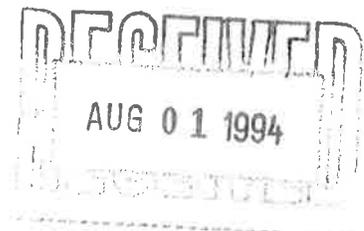
IN THE MATTER OF THE APPLICATION OF) DOCKET NO. 92A-062R
THE CITY OF PUEBLO, A MUNICIPAL)
CORPORATION, FOR AUTHORITY TO CON-) ENTRY OF APPEARANCE
STRUCT A NON-VEHICULAR RECREATIONAL) AND
TRAIL AT GRADE CROSSING TWO(2) TRACKS) NOTICE OF INTERVENTION
OF THE MISSOURI PACIFIC RAILROAD CO-)
MPANY IN PUEBLO, COLORADO, AT AND)
BETWEEN M.P. POST 894.64 & 895.85.)

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSON, FIRMS OR
CORPORATIONS:

You are notified that the Colorado Department of Transportation (CDOT) hereby enters its appearance and intervention in the above captioned application. By this intervention, CDOT does not oppose or contest the granting of this application, but rather indicates to the parties and all interested persons, firms or corporation that CDOT will participate in any hearing which results from an intervention contesting or objecting to any portion of this application as its interests may appear. If no other interventions are filed or if no other petitions seeking interventions are granted, other than interventions in support, so that this application is noncontested or unopposed, this application may be handled as a non-contested matter.

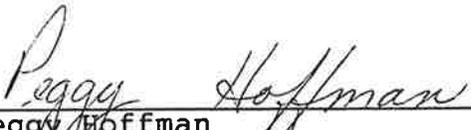
Dated at Denver, Colorado, this 29th day of July, 1994.

GALE A. NORTON
Attorney General



CERTIFICATE OF MAILING

This is to certify that I mailed a true and correct copy of the foregoing ENTRY OF APPEARANCE AND NOTICE OF INTERVENTION in the United States mail, postage prepaid, this 29th day of July, 1994, addressed as follows:



Peggy Hoffman
Administrative Assistant III

Merrill Shields, Esq.
Deputy Attorney General
Regulatory Law Section
1525 Sherman, 5th Floor
Denver, CO 80203

K. C. Packard, Superintendent
of Transportation Services
Union Pacific Railroad CO
2801 RockCreek Pkwy
Kansas City MO 64117

Timothy J. Harris
Agreements Engineer
CDOT
4201 E Arkansas
Denver, CO 80222

Pueblo Conservancy Dist
ATTN: Mr Ray Koester
111 E 5th St/PO Box 234
Pueblo CO 81003

Fay Kastelic, Mayor
City of Pueblo
PO Box 1427
Pueblo CO 81003

Kathy Farley Comm Chair
Pueblo County
215 W 10th St
Pueblo CO 81003

Thomas E. Jagger &
Thomas J. Florczak
Attorneys for City of Pueblo
127 Thatcher Bldg
Pueblo CO 81003

Terry Hart
Attorney, Pueblo County
215 W 10th St
Pueblo CO 81003

William J. Zwick
Sr Urban Design Planner
Dept of Planning & Development
211 E "D" St
Pueblo CO 81003

Kenneth Conyers
CDOT Engineer, Region II
905 Erie Ave
Pueblo CO 81002

Mark Hansen, Esq.
Gorsuch, Kirgis, Campbell
Walker & Grover
1401 17th St Ste 1100
Denver CO 80217

Cliff Shoemaker, Director of
Industrial & Public Projects
Union Pacific RR CO
1416 Dodge St
Omaha NE 68179

Richard Compton
Westplains Energy
200 W First St
Pueblo CO 81003

Elizabeth Fronck
US West Communications
315 Eagleridge Blvd
Pueblo CO 81008

Mike Harris
Public Service CO of Colo
Pueblo Gas & Fuel Div
830 N Main St
Pueblo CO 81003
AG File No. ENR9400098

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

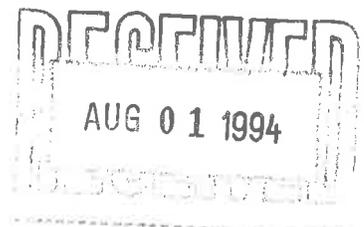
IN THE MATTER OF THE APPLICATION OF)	DOCKET NO. 92A-062R
THE CITY OF PUEBLO, A MUNICIPAL)	
CORPORATION, FOR AUTHORITY TO CON-)	ENTRY OF APPEARANCE
STRUCT A NON-VEHICULAR RECREATIONAL)	AND
TRAIL AT GRADE CROSSING TWO(2) TRACKS)	NOTICE OF INTERVENTION
OF THE MISSOURI PACIFIC RAILROAD CO-)	
MPANY IN PUEBLO, COLORADO, AT AND)	
BETWEEN M.P. POST 894.64 & 895.85.)	

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSON, FIRMS OR CORPORATIONS:

You are notified that the Colorado Department of Transportation (CDOT) hereby enters its appearance and intervention in the above captioned application. By this intervention, CDOT does not oppose or contest the granting of this application, but rather indicates to the parties and all interested persons, firms or corporation that CDOT will participate in any hearing which results from an intervention contesting or objecting to any portion of this application as its interests may appear. If no other interventions are filed or if no other petitions seeking interventions are granted, other than interventions in support, so that this application is noncontested or unopposed, this application may be handled as a non-contested matter.

Dated at Denver, Colorado, this 29th day of July, 1994.

GALE A. NORTON
Attorney General

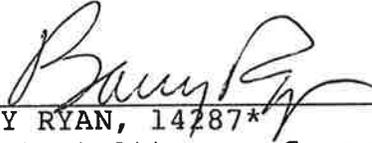


STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

PATRICIA S. BANGERT
Deputy Attorney General

CHARLOTTE ROBINSON
First Assistant Attorney General



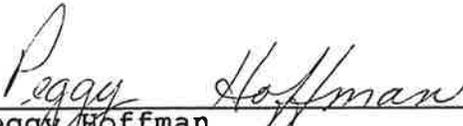
BARRY RYAN, 14287*
Assistant Attorney General
Natural Resources Section

Attorneys for The Commission

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5110
FAX: (303) 866-3558
*Counsel of Record
AG File No. ENR9400099

CERTIFICATE OF MAILING

This is to certify that I mailed a true and correct copy of the foregoing ENTRY OF APPEARANCE AND NOTICE OF INTERVENTION in the United States mail, postage prepaid, this 29th day of July, 1994, addressed as follows:


Peggy Hoffman
Administrative Assistant III

Merrill Shields, Esq.
Deputy Attorney General
Regulatory Law Section
1525 Sherman, 5th Floor
Denver, CO 80203

K. C. Packard, Superintendent
of Transportation Services
Union Pacific Railroad CO
2801 RockCreek Pkwy
Kansas City MO 64117

Timothy J. Harris
Agreements Engineer
CDOT
4201 E Arkansas
Denver, CO 80222

Pueblo Conservancy Dist
ATTN: Mr Ray Koester
111 E 5th St/PO Box 234
Pueblo CO 81003

Fay Kastelic, Mayor
City of Pueblo
PO Box 1427
Pueblo CO 81003

Kathy Farley Comm Chair
Pueblo County
215 W 10th St
Pueblo CO 81003

Thomas E. Jagger &
Thomas J. Florczak
Attorneys for City of Pueblo
127 Thatcher Bldg
Pueblo CO 81003

Terry Hart
Attorney, Pueblo County
215 W 10th St
Pueblo CO 81003

William J. Zwick
Sr Urban Design Planner
Dept of Planning & Development
211 E "D" St
Pueblo CO 81003

Kenneth Conyers
CDOT Engineer, Region II
905 Erie Ave
Pueblo CO 81002

Mark Hansen, Esq.
Gorsuch, Kirgis, Campbell
Walker & Grover
1401 17th St Ste 1100
Denver CO 80217

Cliff Shoemaker, Director of
Industrial & Public Projects
Union Pacific RR CO
1416 Dodge St
Omaha NE 68179

Richard Compton
Westplains Energy
200 W First St
Pueblo CO 81003

Elizabeth Fronck
US West Communications
315 Eagleridge Blvd
Pueblo CO 81008

Mike Harris
Public Service CO of Colo
Pueblo Gas & Fuel Div
830 N Main St
Pueblo CO 81003
AG File No. ENR9400098

RESOLUTION NO. 7345

A RESOLUTION APPROVING AN AGREEMENT BETWEEN PUEBLO, A MUNICIPAL CORPORATION AND THE MISSOURI PACIFIC RAILROAD COMPANY, AUTHORIZING THE PRESIDENT OF THE CITY COUNCIL TO EXECUTE SAME, AND AUTHORIZING THE FILING OF AN APPLICATION WITH THE COLORADO PUBLIC UTILITIES COMMISSION FOR AUTHORIZATION TO CONSTRUCT THE IMPROVEMENTS CONTEMPLATED THEREIN

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Agreement dated April 11, 1994, between Pueblo, a municipal corporation, and the Missouri Pacific Railroad Company, a copy of which is on file in the office of the City Clerk (the "Agreement"), having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The President of the City Council is authorized to execute and deliver the Agreement on behalf of the City, the City Clerk is directed to affix the seal of the City thereto and attest same, and the City Attorney is authorized to file an appropriate application with the Colorado Public Utilities Commission ("PUC") for approval of same and authorization to construct the improvements contemplated therein.

SECTION 3.

Funds payable by the City pursuant to the terms of the Agreement shall be paid from Account No. 145-1993-308-0-40-8815.

SECTION 4.

This Resolution shall become effective upon final passage and the approval of the

Agreement by the PUC.

INTRODUCED: April 11, 1994

By FAY KASTELIC
Councilperson

ATTEST:

Marian D. Mead
City Clerk

APPROVED:

By Joseph R. Lawrence
President of the City Council

AGREEMENT allowing the CITY OF PUEBLO permission to be on and about Railroad property for the purpose of construction, maintenance and use of a nonvehicular recreation trail between Mile Post 894.64 and Mile Post 895.85 on the Hoisington Subdivision in Pueblo, Colorado.

THIS AGREEMENT is made as of the 11th day of April, 1994, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter the "Railroad") and the CITY OF PUEBLO, a municipal corporation of the State of Colorado (hereinafter called "Licensee").

IT IS AGREED as follows:

172670

Section 1. Right Granted.

A. The Railroad hereby grants Licensee the right, during the term, hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have reasonable ingress to and egress from the Railroad's right-of-way between the Railroad's Mile Post 894.64 and Mile Post 895.85 on the Hoisington Subdivision at Pueblo, Colorado, as shown on the attached print dated September 25, 1993, marked Exhibit A, for the sole and exclusive purpose of constructing, maintaining and using a 20-foot-wide concrete nonvehicular recreational trail across Railroad's property and constructing a 10-foot-wide asphalt crossing surface across the Railroad's tracks for use by pedestrians and maintenance vehicles. Railroad is agreeable to allowing this operation to be undertaken, providing the following conditions are met:

B. This agreement and the license and permission herein granted shall be effective as of the date first hereinabove written, and shall remain in full force and effect unless terminated as herein provided.

C. The right hereby granted is subject and subordinate to the Railroad's use of the railroad's property for railroad and incidental purposes, and is subject to any and all encumbrances and rights (whether public or private), irrespective of whether or not they are recorded, existing at the time of granting said right, and also to any and all extensions and renewals of said existing encumbrances and rights. Licensee shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's said property, unless Licensee, at Licensee's own expense, settles with and obtains release from such nonparties on mutually satisfactory terms.

D. The parties agree and understand that Railroad operations may include blocking the subject crossing for periods of time as necessary in the normal course of operation. The Railroad will make reasonable efforts to keep the crossing clear when switching is not being performed but it shall not be subject to any liability, penalty or breach of this agreement by blocking the crossing.

E. Said right is granted only insofar as the Railroad lawfully may grant the same, and the Railroad makes no covenant or warranty of title, for quiet possession or against encumbrances. Said right includes only the Railroad's property identified in Paragraph A of this section, and no other property; and Licensee, by virtue of this grant, shall not encroach upon, occupy or use any other property of the Railroad. Licensee's use of said property shall be subject to the safety and performance of work provisions set forth in Section 2 of this agreement.

F. The Railroad grants to Licensee only the right for the purpose aforesaid, and no interest in land or estate. Licensee shall not use or permit use of said property or any part thereof for any other purpose. No nonparty shall be admitted by Licensee to use or occupy any part of the Railroad's property for any purpose except as specifically provided for herein without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent, which, if granted, may be subject to such terms and conditions as the Railroad, in the Railroad's sole discretion, may deem to be necessary or convenient. If said property of the Railroad, or any part thereof, shall cease to be used for the purposes aforesaid or shall be used for purposes unauthorized herein, then the right hereby granted as to such property or parts thereof shall cease and terminate.

G. As compensation for the rights granted herein, Licensee shall pay the Railroad, in advance, the sum of Two Thousand Five Hundred Dollars (\$2,500.00).

Section 2. Safety and Performance of Work.

A. The Licensee shall furnish all labor, material, equipment and supervision for, and shall install a ten-foot-wide asphalt surface in the vicinity of Mile Post 894.64 in Pueblo, Colorado, as shown generally on Railroad's Exhibit A print dated September 25, 1993.

B. All work by or on behalf of Licensee on the Railroad's property shall be performed by Licensee at Licensee's own expense and without expense to the Railroad. All references herein to work of Licensee shall include such work, whether performed by Licensee or Licensee's agents, employees or contractors.

C. Before commencing any such work, Licensee shall give the Railroad reasonable notice thereof, which notice shall be given not less than one (1) week, exclusive of weekends and holidays, prior to the time work is to commence. Railroad's representatives to be contacted prior to entering upon Railroad's right-of-way is Superintendent of Transportation Services in Kansas City, Missouri, telephone (816) 245-2796, and Manager-Track Maintenance in Scott City, Kansas, telephone (316) 872-2002. All of said work shall be performed at reasonable times and in such manner as not to endanger, interfere with, interrupt or delay the Railroad's operations, nor damage the Railroad's property, nor cause injuries to or death of persons or damage to or loss or destruction of property of the Railroad.

D. Licensee shall exercise due care to prevent injuries to or death of persons and damage to or destruction of property for the safety of whom or of which the Railroad may be responsible, and damage to or destruction of property of the Railroad. Licensee shall and does assume all risk of damage to Licensee's own property and injury to Licensee's own personnel, resulting from or incidental to the prosecution of said work or from the presence of Licensee's property and personnel upon or about the Railroad's property, except to the extent such loss is caused by the negligence of the Railroad, its officers, agents or employees.

E. In performing said work on or in the vicinity of the Railroad's property, Licensee shall exercise special care not to cause or create instability of rock, earth or other material, or cause slides of falling rock, earth or debris, nor to damage, obstruct or interfere with drainage, whether natural or artificial.

F. The Railroad, at the expense of Licensee, which expense Licensee agrees to pay promptly upon receipt of bill or bills therefor, shall furnish and station such flagman or flagmen as in the Railroad's judgment may be necessary or expedient to protect the Railroad's property and operations at the site of all such work by Licensee near any track of the Railroad. Licensee shall not perform any work in the vicinity of any track or tracks where the Railroad has determined a flagman or flagmen should be stationed, unless such flagman or flagmen are present.

G. Upon the completion of such work, Licensee shall restore and leave the Railroad's property in a condition satisfactory to the Railroad, including filling and leveling of all holes and pits, if any.

H. Licensee, at its own sole cost and expense, shall determine the appropriate need for and design of warning signs at the crossing and shall design, construct and install and maintain those signs throughout the existence of this crossing. Licensee accepts full responsibility for the design, construction, installation and maintenance of such signs or signals and will hold the Railroad harmless and indemnify the Railroad from any claims of their inadequacy whatsoever.

Section 3. Claims and Liens for Labor and Material.

Licensee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Railroad's property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee.

Section 4. Compliance with Legal Requirements.

Licensee, in performing the work, shall observe and comply with all applicable federal, state and municipal and other laws, ordinances, rules and regulations, and shall apply for and obtain any and all public authority, permission and licenses necessary therefor, including any permission or authority from the Colorado Public Utilities Commission. Licensee shall indemnify and hold harmless the Railroad from and against any loss, cost, damage and expense, liabilities, penalties, claims and forfeitures resulting from any failure of Licensee to comply with the provisions of this section, or to comply with the requirements of any public authority, license or permission obtained as aforesaid.

Section 5. Assumption of Risk; Indemnification.

Licensee's use and occupancy of the Railroad's right-of-way is at Licensee's own risk, and Licensee agrees to and does assume all risks thereof and incidental thereto, including, without limitation, risks incident to the Railroad's train operations within the right-of-way. Licensee acknowledges that Licensee's use of the Railroad's right-of-way permitted hereunder will subject the Railroad's property and operations to additional hazards and liability; and, as material consideration for this license, Licensee shall indemnify and hold harmless the Railroad and other railroad companies which use the property of the Railroad, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which may result from injury to or death of persons whomsoever or from loss of or damage to property whatsoever (including damage to the roadbed, track, equipment, or other property of the Railroad and such other railroad companies) when such injury, death, loss or damage is due to or arises in connection with or as a result of the use of the Railroad's right-of-way by Licensee or the agents or employees of Licensee, or by others with the consent of Licensee, or by the general public, or by the equipment on the right-of-way with the consent of Licensee, or the breach of any covenant or obligation assumed by or imposed

on Licensee pursuant to this agreement, or for failure of Licensee to promptly and fully do any act or work for which Licensee is responsible pursuant to this agreement, except to the extent such loss is caused by the negligence of the Railroad, its officers, agents or employees.

Section 6. Termination on Breach and Waiver of Breach.

It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by Licensee shall, at the option of the Railroad, forthwith work a termination of this agreement and all rights of Licensee hereunder. A waiver by the Railroad of a breach by Licensee of any covenant or condition of this agreement shall not impair the right of the Railroad to avail the Railroad of any subsequent breach thereof.

Section 7. Default.

If Licensee shall fail, refuse or neglect to do, keep, observe and perform each and all of the terms, provisions, conditions and covenants of this agreement, the Railroad, in addition to any other rights and remedies the Railroad may have, may perform any work which in the judgment of the Railroad is necessary to place the Railroad's property in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and Licensee will reimburse the Railroad for the expense thereof.

Section 8. Insurance.

A. Licensee shall procure, or require any contractor engaged or employed to perform any work hereunder on behalf of Licensee on any part of premises to procure, and keep in effect during the period of such work Worker's Compensation Insurance in statutory limits, and Contractor's Public Liability Insurance providing for a limit of not less than \$1,000,000.00 for all damages arising out of bodily injuries to or death of one person and, subject to that limit for each person, a total limit of \$1,000,000.00 for all damages arising out of bodily injury or death of two or more persons in any one occurrence, and Property Damage Liability Insurance providing for a limit of not less than \$1,000,000.00 for all damages arising out of injury to or destruction of property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$1,000,000.00 for all damages arising out of injury to or destruction of property during the annual policy period. If any part of the work is sublet, similar insurance shall be provided by or in behalf of the subcontractors to cover their operations. Any limitation in the foregoing insurance which excludes work performed within fifty (50) feet of a railroad track shall be exempted out of said policies.

B. Regardless of the insurance provisions set forth in Section 8 hereof, Licensee shall further require any contractor engaged or employed to perform any of the work referred to herein on any part of Railroad's property covered by this agreement to procure and keep in effect during the period of such work Railroad Protective Liability Insurance, in the form set forth in Federal Highway Program Manual, Volume 6, Section 2, Subsection 2, dated October 25, 1974, issued by Federal Highway Administration, as amended, on behalf of railroad, in amount of \$2,000,000.00 combined single limit per occurrence for bodily injury, death and property damage, with an aggregate limit of \$6,000,000.00 for the annual term of the policy; such insurance shall be in the form and in a company satisfactory to Railroad; and Licensee or its contractor shall not attempt to perform any work on or about Premises until notified by Railroad that the Railroad Protective Liability policy required hereunder is in form satisfactory to Railroad.

C. Licensee shall further, at its own sole cost and expense procure and maintain in effect General Public Liability Insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least \$1,000,000.00 each occurrence or claim and aggregate limit of at least \$1,000,000.00. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a two (2) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this agreement be cancelled.

D. The contractor shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsements and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify the Railroad in writing of any material alteration, including any change in the retroactive date in any "claims made" policies, or substantial reduction of aggregate limits if such limits apply, or cancellation thereof at least thirty (30) days prior thereto. The insurance policies shall be written by a reputable insurance company acceptable to the Railroad and authorized to transact business in Colorado.

E. Anything in this Agreement to the contrary notwithstanding, the Railroad has been advised that the Licensee is self-insured for general public liability insurance for which the Licensee shall be responsible under this Agreement and arising out of Licensee's obligations to Railroad under this Agreement. Railroad agrees that so long as Licensee maintains its self-insured status, no additional or supplemental insurance coverage shall be required under this Agreement.

Section 9. Fiber Optic Cable Warning.

A. Fiber optic cable systems may be buried on the Railroad's property. Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

B. In addition to other indemnity provisions in this agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractors, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 10. Successors and Assigns.

This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, but Licensee shall not assign this agreement or any right hereunder without the written consent of the Railroad.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in duplicate as of the day and year first herein written.

MISSOURI PACIFIC RAILROAD COMPANY

By 

Title: Assistant Vice President-
Contracts and Real Estate

Attest:

CITY OF PUEBLO

By 

Title:


Title:

Pursuant to attached ~~Ordinance~~
Resolution dated April 11, 1994



AS CONSTRUCTED

NO REVISIONS

REVISED

VOID

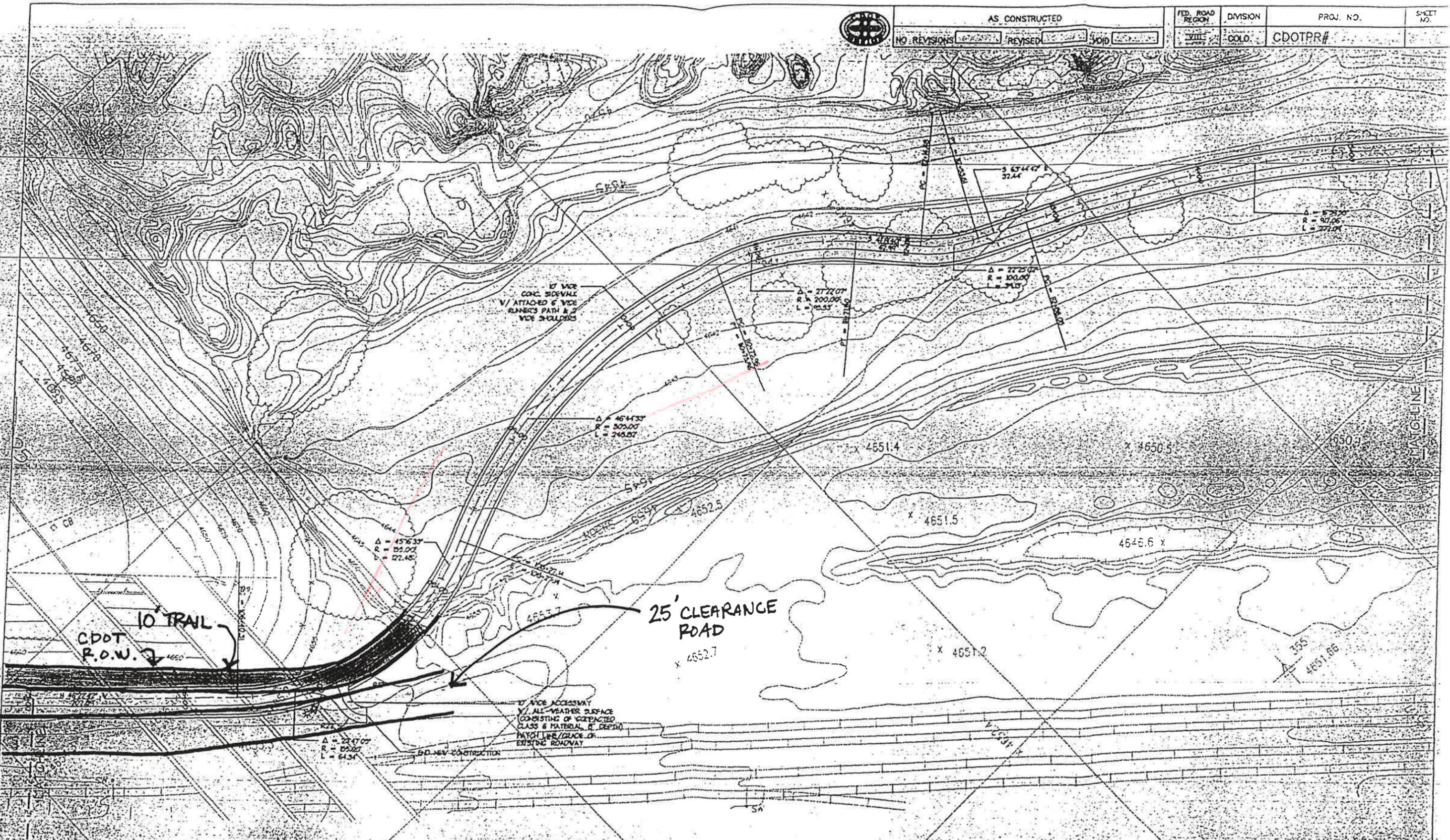
FED. ROAD REGION
VIII

DIVISION
COLO.

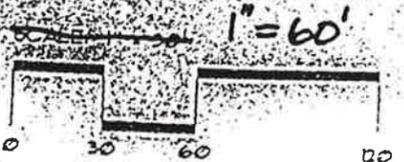
PROJ. NO.

CDOTPR#

SHEET NO.



DATE: 12/3/95 3:58BASEDWC



DIVISION OF HIGHWAYS
APPROVED: _____
CHIEF ENGINEER DATE

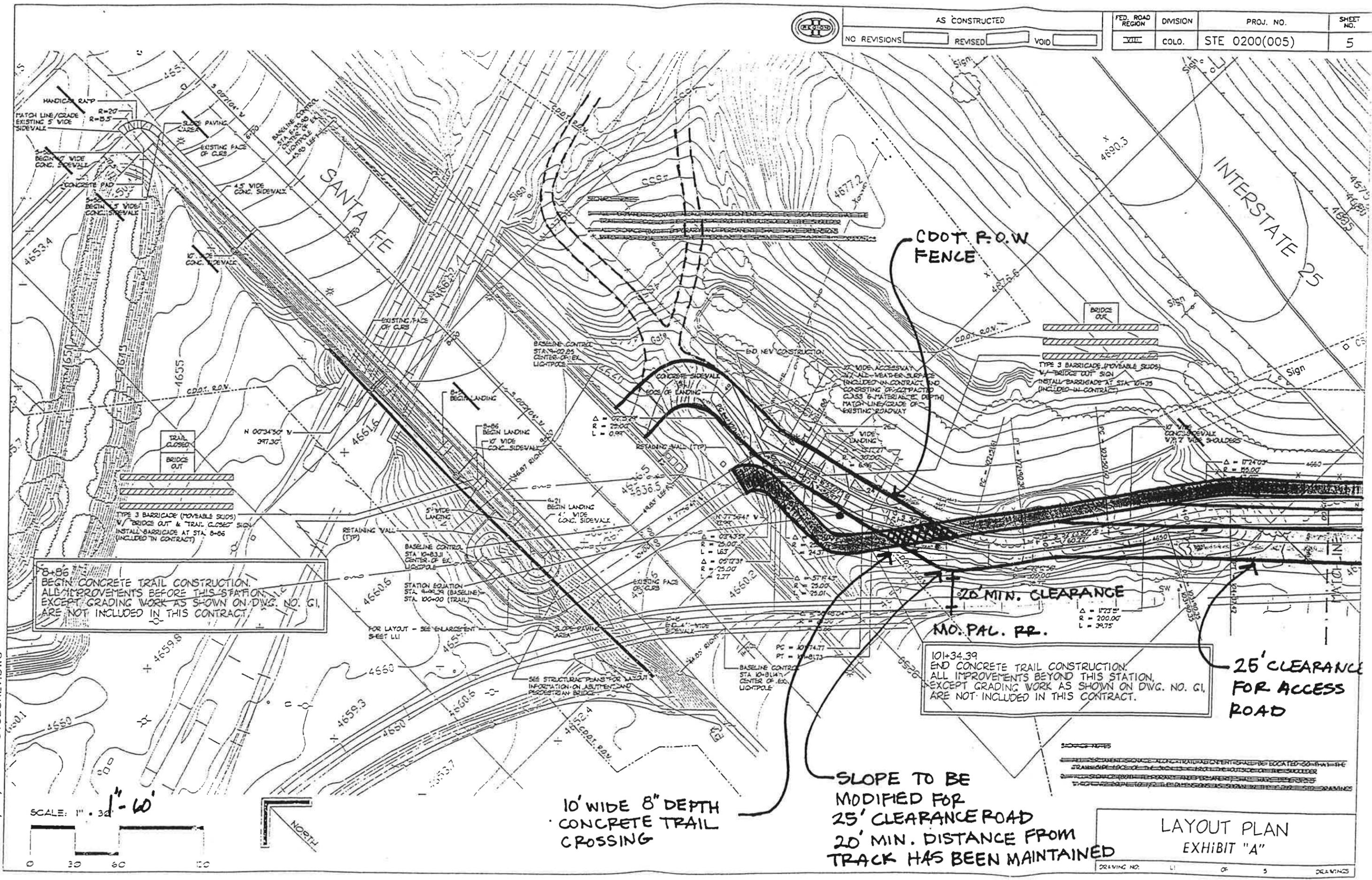
DSW
DESIGN STUDIOS WEST, INC.
1425 Market Street, Suite 100
Denver, Colorado 80202
(303) 823-3455

LAYOUT PLAN
EXHIBIT "A"
DRAWING NO. _____ OF _____ DRAWINGS



AS CONSTRUCTED
 NO REVISIONS REVISED VOID

FED. ROAD REGION	DIVISION	PROJ. NO.	SHEET NO.
VIIIC	COLO.	STE 0200(005)	5



8+86 BEGIN CONCRETE TRAIL CONSTRUCTION. ALL IMPROVEMENTS BEFORE THIS STATION, EXCEPT GRADING WORK AS SHOWN ON DWG. NO. G1, ARE NOT INCLUDED IN THIS CONTRACT.

10+34.39 END CONCRETE TRAIL CONSTRUCTION. ALL IMPROVEMENTS BEYOND THIS STATION, EXCEPT GRADING WORK AS SHOWN ON DWG. NO. G1, ARE NOT INCLUDED IN THIS CONTRACT.

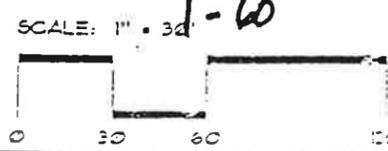
SLOPE TO BE MODIFIED FOR 25' CLEARANCE ROAD 20' MIN. DISTANCE FROM TRACK HAS BEEN MAINTAINED

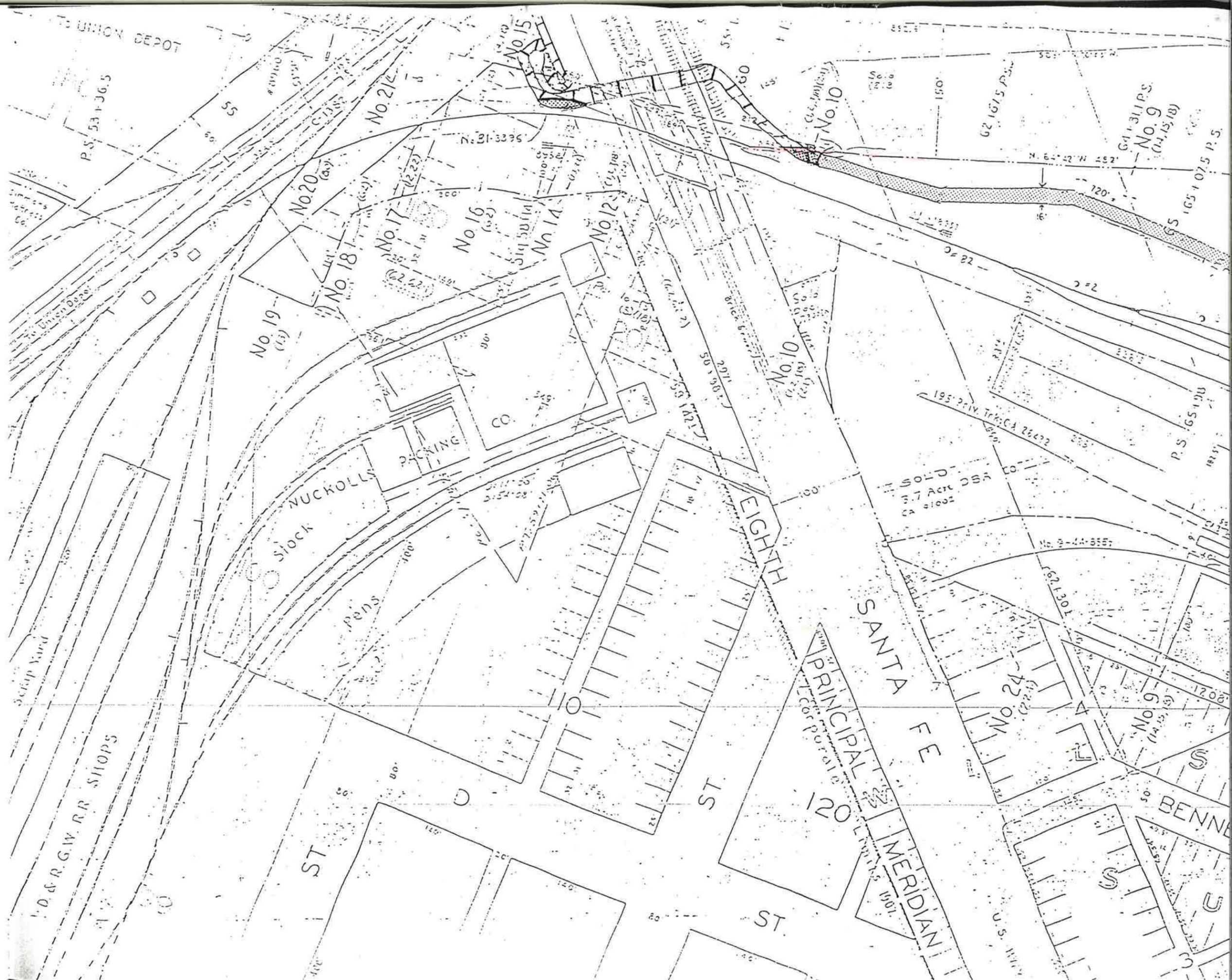
10' WIDE 8" DEPTH CONCRETE TRAIL CROSSING

25' CLEARANCE FOR ACCESS ROAD

LAYOUT PLAN EXHIBIT "A"

DATE: 1/19/94 315BSREV.DWG





TO UNION DEPOT

P.S. 53-36.5

Ship Yard

D & R.G.W. RR STOPS

NUCKOLLS
Stock

PENS

PACKING CO.

ST

ST

EIGHTH

SANTA FE

PRINCIPAL MERIDIAN
120

ST

BENNE

No. 21

No. 20

No. 17

No. 16

No. 14

No. 12

No. 19

No. 18

No. 10

No. 10

No. 9

No. 24

No. 9

N. 64° 42' W 152'

62° 16' 15' P.S.

64° 31' 15" P.S.
(14, 15, 18)

65° 10' 7.5" P.S.

195' Priv. Trk. CA 26422

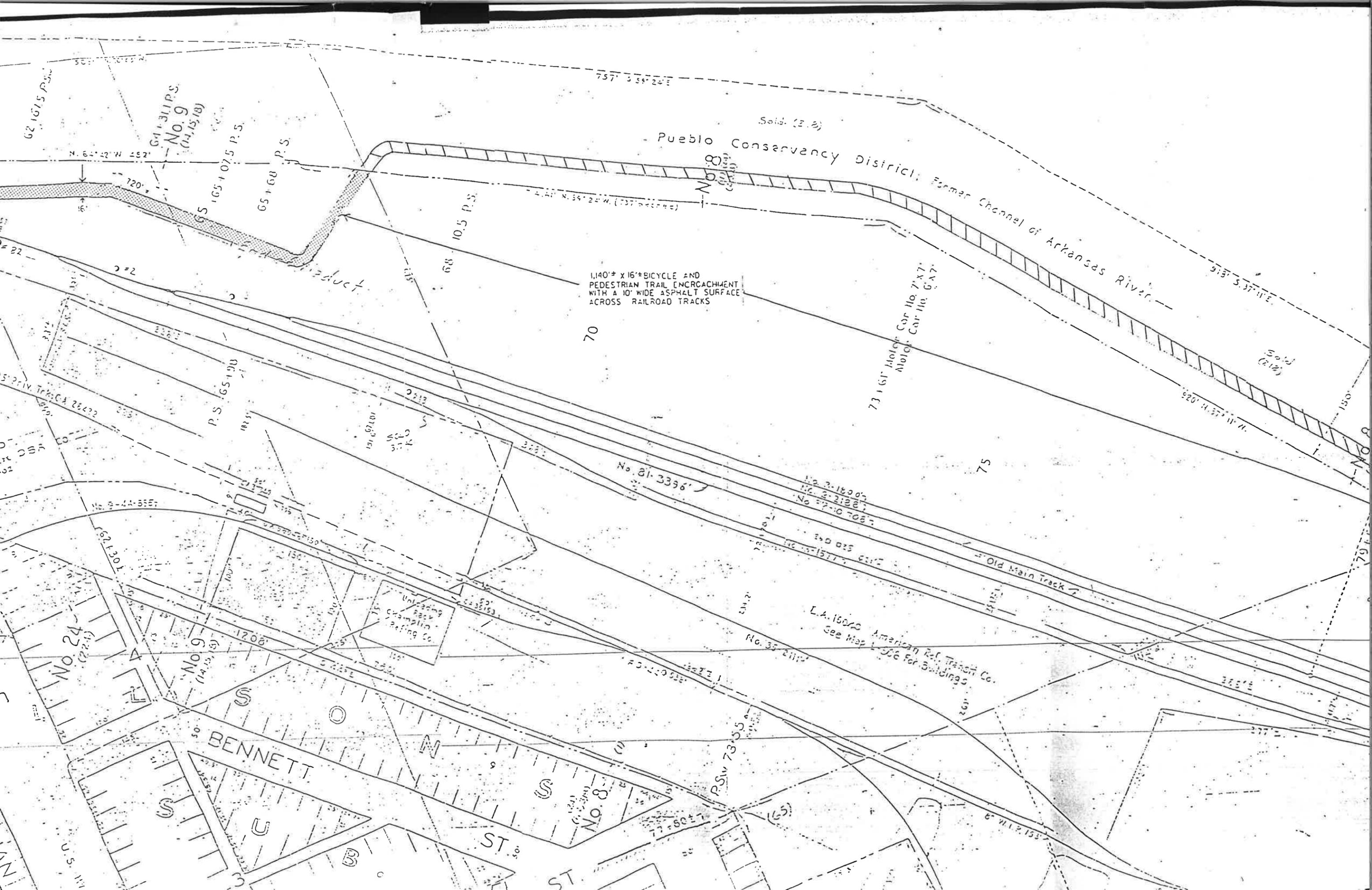
SOLD
3.7 Acre DB
CA 41002

No. 4-44-555

62° 13' 0"

12.06'

U.S. HIGHWAY



1,140' x 16' BICYCLE AND PEDESTRIAN TRAIL ENCROACHMENT WITH A 10' WIDE ASPHALT SURFACE ACROSS RAILROAD TRACKS

Pueblo Conservancy District, Former Channel of Arkansas River

BENNETT ST.

ST. ST.

ST.

No. 9 (14, 15, 16)

No. 8 (14, 15, 16)

No. 24 (22, 23)

No. 81-3396

L.A. 18000 American Ref. Transp. Co. Buildings See Map 1-506 for Buildings

Unloading Dock Champlin Refining Co.

73161 Motor Car No. 71A7 Motor Car No. 6A7

621075 P.S.

641311 P.S. No. 9 (14, 15, 16)

651075 P.S.

65108 P.S.

10.5 P.S.

P.S. 65120

757' S 34° 24' E

915' S 37° 11' E

N. 83° 42' W 152'

N. 34° 24' W (737' 10' 0' 0' 0')

620' N 37° 11' W

1200'

No. 35-2111

No. 2-1800
No. 2-2128
No. 2-10708

Old Main Track 2

P.S. 7335

6' W 1.2' 153'

70

75

Sold (212)

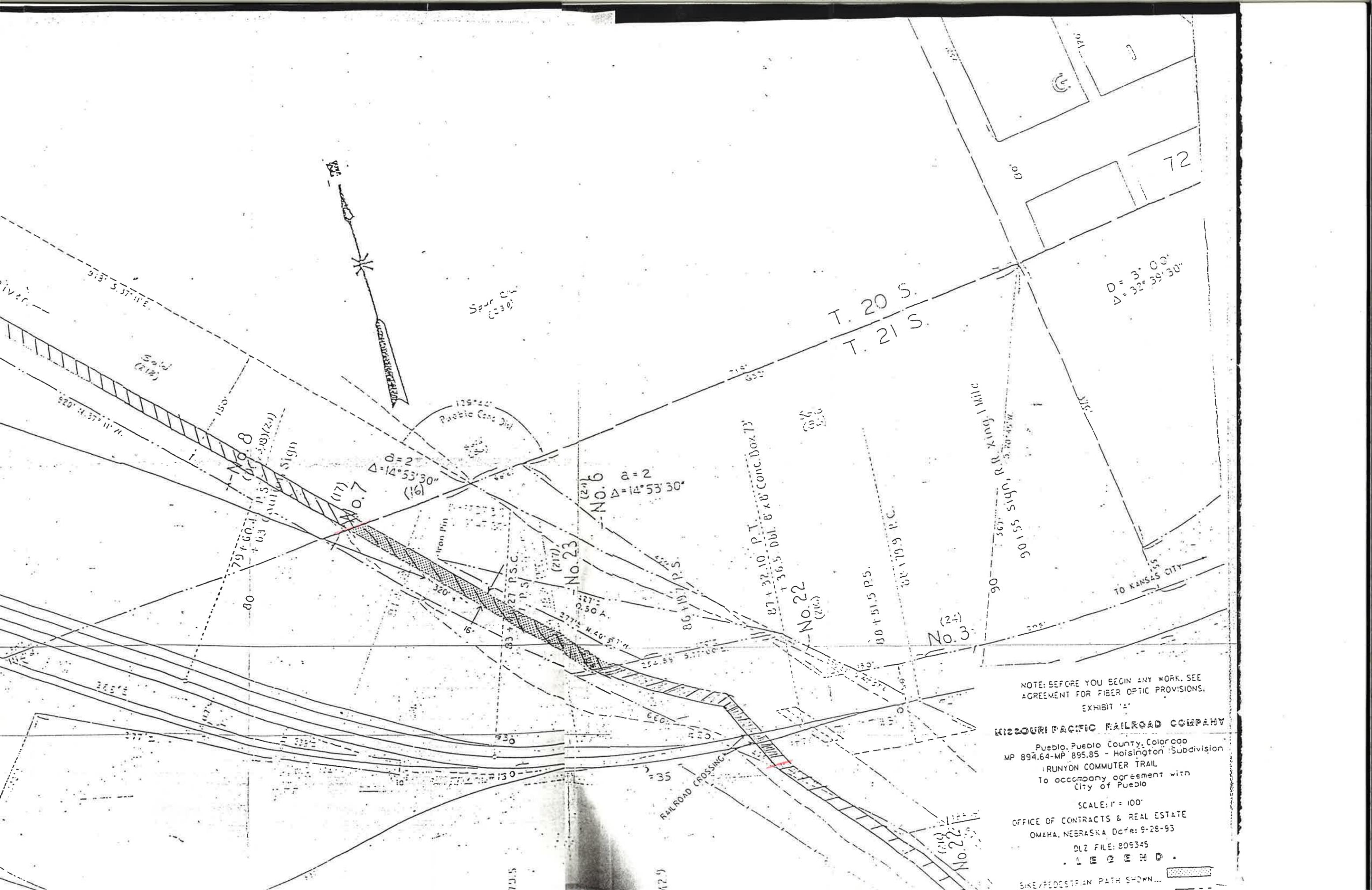
Sold (212)

No. 80 (14, 15, 16)

79

79

79



D = 3' 00"
 Δ = 32° 39' 30"

T. 20 S.
 T. 21 S.

No. 6
 a = 2
 Δ = 14° 53' 30"

No. 22
 (216)

No. 3
 (24)

NOTE: BEFORE YOU BEGIN ANY WORK, SEE
 AGREEMENT FOR FIBER OPTIC PROVISIONS.
 EXHIBIT 'A'

MISSOURI PACIFIC RAILROAD COMPANY

Pueblo, Pueblo County, Colorado
 MP 894.64-MP 895.85 - Hoisington Subdivision
 RUNYON COMMUTER TRAIL
 To accompany agreement with
 City of Pueblo

SCALE: 1" = 100'
 OFFICE OF CONTRACTS & REAL ESTATE
 OMAHA, NEBRASKA Date: 9-28-93
 DLZ FILE: 805345

L E C E R D

BIKE/PEDESTRIAN PATH SHOWN...